CONGRESSIONAL DIGEST

PRO AND CON

May, 1934

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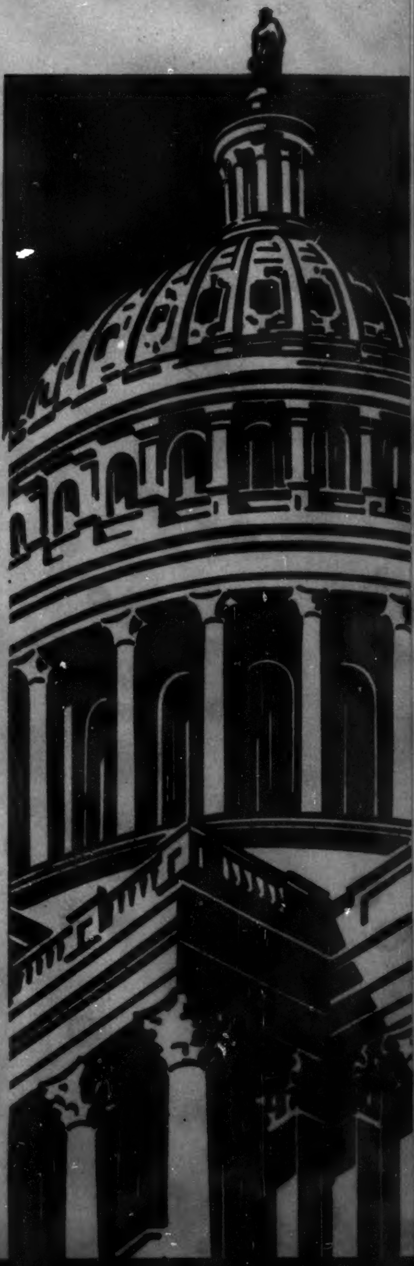

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H. T. N. ROBINSON, Editor and Publisher — ALICE GRAM ROBINSON, Founder

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PRO AND CON ARGUMENTS

THOSE FAVORING

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THE QUESTION THIS MONTH:

Should the Federal Securities Act of 1933 be Modified?

Foreword

WHAT the Roosevelt Administration considered one of the most important features of the New Deal was the enactment of legislation to curb speculation in securities.

Consequently, soon after March 4, 1933, Administration leaders set about preparing this legislation, which was intended to cover banking reform and stock market operations.

Out of the various conferences on the subject came the Glass-Steagall and other banking bills; the Federal Securities Act and, finally, the Stock Exchange control bill.

The Securities Act was put through first, followed by banking bills, while the Stock Market bill was held back to await the investigation of the New York Stock Exchange which had already been started by the Senate Committee on Banking and Currency.

Strict regulation of the sale of securities in interstate commerce had been promised in the Democratic platform of 1932 and when it was decided, in March, 1933, to have a bill introduced in Congress to carry out the platform pledge, the President turned the task of writing the bill over to Huston Thompson, who had served several years as a member of the Federal Trade Commission under President Wilson and who had been one of the authors of the Democratic platform.

Supported by a strong message from President Roosevelt, the bill, as drawn by Mr. Thompson, was introduced in both houses of Congress. Mr. Thompson appeared before the House Committee on Interstate and Foreign Commerce and the Senate Committee on Banking and Currency and explained his bill. In both instances the hearings were brief.

As a result of these hearings, Administration leaders came to the conclusion that the bill needed changes and it was turned over to Professor Felix Frankfurter, of the Harvard Law School, for revamping.

After being amended a number of times by both the House and Senate Committees, the bill was finally put through both houses with unusual despatch. In the House the debate was limited to five hours. Not more than five hours was devoted to its consideration by the Senate. On May 27 the President signed the bill.

The step by step progress of the bill, including the provisions of the Democratic platform and the President's message to Congress urging its pasage, will be found in the legislative history of the bill on page 131.

The Federal Securities Act was passed at the flood tide of the popularity of the New Deal, when business men in all parts of the country were writing and telegraphing members of the Senate and House to stand by the President regardless of party politics. Few voices were raised against the Roosevelt program. Protests were made in the House that the Securities bill was being passed under a gag rule, but the protests were against the gag rule and not against the bill itself. In the Senate no voice was raised against the measure.

This was due not only to the feeling that the Administration must be supported but also because public feeling against speculation, or rather the disastrous results of speculation, was running strong as a result of nation wide losses in securities of all sorts.

The psychological setting is vividly set forth by Professor James in his article beginning in the next page.

In spite of the lack of opposition to the bill when it was being considered in Congress, it had not been long on the statute books before issuers and dealers in securities began to voice protests against what they term its drastic features.

The Chamber of Commerce of the United States, the American Bar Association and corporation attorneys in every section of the country began complaining that the provisions of the bill were so harsh as to make any concern fearful of placing securities on the market.

Many of the provisions of the bill are so technical that the layman finds it difficult to understand them, but the main objection, according to the experts, lies against the provision setting forth the responsibilities of those who issue or sell securities.

According to those who are urging that the bill be modified, the responsibility-fixing provisions are so drastic that even an inadvertent misstatement in a prospectus results in dire consequences.

As the present session of Congress draws to a close, the chances of modification of the bill before adjournment are lessening. Various suggestions have been filed with the House Committee on Interstate Commerce, but that committee has been so busy with the Stock Market bill it has not had time to reach them.

So far the President and the Administration leaders in Congress have turned a deaf ear toward suggestions for amending the bill, but it is expected that as soon as the House has disposed of the Stock Market bill, Chairman Rayburn, of the House Committee, will order committee hearings on the proposed amendments.

If the Administration approves the amendments they can easily be put through the House before adjournment but in the Senate a fight for more sweeping amendments than the Administration desires will be made. And such a fight might delay action.

Until the House Committee acts it is difficult to offer sound speculation as to the outcome.

Why the Federal Securities Act was Passed

by Laylin K. James

Professor of Law, University of Michigan Law School

Beginning with the Kansas Securities Act, enacted in 1911, every State except Nevada has enacted some type of paternalistic legislation designed to protect investors in securities, protection, one might say "from the results of their folly." These statutes range from fairly complete control of the issue and sale such as exists under the Ohio act, to fraud acts such as those of New York, New Jersey, Maryland and Delaware. Opinions on the effectiveness of the respective blue sky acts are as diverse as persons expressing them. That the effectiveness of their enforcement depends entirely upon the personnel of the officials in charge is conceded by all. Likewise there has been general agreement among the supporters of these acts that the federal mail frauds legislation needs to be supplemented to close certain interstate channels of communication to fraudulent securities vendors.

Any appraisal of this federal legislation must visualize its setting. Beginning with the pseudo education accompanying the Liberty Loan drives, a large mass of the American public became security-investment conscious. The subsequent period of prosperity and inflation had several effects. It expanded savings with which this public blindly sought to achieve wealth and opulence overnight. Buyers turned increasingly to securities carrying higher yields in interest rates, such as debentures, foreign government and corporation bonds, construction bonds, stock equities ostensibly greater but necessarily greater risks, as evidenced by the complicated holding company pyramided stocks, stocks of new industrials, such as radio companies, airplane manufacturing and transportation companies—each company assumed to be a potential Ford Motor Co. The smug took "flyers" and the unitiated followed their own primitive instincts. And when I here refer to the public, I am including the commercial bankers whose optimism caused them to be swept along with the speculative current.

Promoters and managements inspired and profited by this buying extravaganza. In their conscious or unconscious desire to get a portion of this easy capital they issued securities for overvalued properties, pyramided and complicated corporate structures, over-expanded, overborrowed. Not only the promoters and managements accepted the golden opportunity, but the bankers likewise too frequently forgot their duty of counselors; they allowed the potential profits to color their advice, and to lessen their precautionary investigations; they marketed securities with little or no consideration of the productive or wasteful consequences; they reaped a harvest on the popularity of management and fixed trusts. We know they tolerated foreign graft in the competition for their own profits from marketing the foreign securities. Parenthetically, that "smoothing the palm" carried over into the purchase of commodities in our domestic markets. The spectacle of Chicago bankers literally thrusting upon Insull their accumulations of others' money is not an isolated page of the banker's responsibility. I am not charging all these people with deliberate, malicious, illegal misconduct. The weaknesses of investors, promoters, management and bankers are not necessarily indicative of moral or economic turpitude. While one cannot measure accurately, I feel certain they are a result of the speculative mania of the inflationary era. On any logical basis the conduct to which I have referred compares favorably with that found in the less public affairs of the daily life of that period. The significance of reckless finance, however, with respect to the Securities Act of 1933 is not to be measured by its logical bearing but by its emotional effects.

Another part of our picture contributing to the post-prosperity public clamor for protection was and is the clearly fraudulent security transaction. Estimates vary, but there seems to be agreement in estimating minimum annual losses to American security buyers from patently fraudulent sales at approximately one billion dollars.

The fantastic schemes of such men were literally conceived one day; stock certificates rushed from the printers the next and sold to the gullible, rashly hopeful public before the week-end. They operated lavish financial speakeasies, crammed boiler rooms (one operator had more than fifty telephone salesmen in his boiler room; the telephone bills for one year exceeded $400,000). Bucket shops, installment plans, deposit plans for switching worthless for good securities, management trusts, pool operations, wash sales, high pressure salesmanship were all a part of their stock in trade.

Another factor in the general background of the Securities Act has been the attack made upon the investment bankers and corporate managements by publicists. Louis D. Brandeis (now a Justice of the United States Supreme Court) opened the way in 1914 by his book, "Other Peoples Money." Thorstein Veblen in his book, "Absentee Ownership and Business Enterprise," published in 1923, called attention to the separation of ownership and management in our corporation picture. William Z. Ripley, by his attack on some of the managements' and bankers' abuses of power, gave the impetus to much of the criticism of recent years. Building upon Brandeis, Veblen and Ripley and particularly upon the fact investigations of Gardner C. Means, Adolf A. Berle has popularized and particularized these criticisms into a systematic philosophy which makes the development of the interrelations between the management and the bankers appear as a sinister and preconceived program to rob the public investors in corporate securities. These writers have performed a real service, however much they have magnified the undesirable practices to justify their theories. For our purpose their work is important in that they have helped to create attitudes of mind which readily held the bankers and the management groups responsible for security losses.

In the setting for the enactment of the Securities Act the significance of the market crash in 1929 and the

depression cannot be appraised properly without consideration of the changes in the investment picture during the decade or more immediately prior thereto. It is estimated that from 1908 to 1929 the percentage of tangible wealth in the United States in the form of securities rose from 23 per cent to over 75 per cent. From 1922 to 1929 the dollar total of new issues aggregated more than thirty-seven billion dollars. From 1900 to 1928 the number of stockholders of record increased from four million four hundred thousand to over eighteen million. Allowing for duplications, the number increased almost five-fold. Almost overnight a large part of the public, whose savings had previously gone into institutions and indirectly into securities, were directly investing in securities.

With a large group of investors swindled and defrauded by deliberate and systematic criminals, a larger group suffering tremendous paper and real losses from the market crash, a constant revelation of dubious corporate and banking practices, and an accusing finger pointed at the management and banking groups, it is not surprising that the investing public, looking for someone on whom to throw the blame, saddled responsibility for their security losses upon the groups mentioned.

Out of its despair and anger grew the tenth positive plank of the Democratic National Platform and thereafter the Securities Act of 1933. I recognize, of course, that other factors played a part in this enactment. It remains, however, not only that the psychological setting was perfect for the legislation but also that this setting will make particularly difficult amending the Act, if amendments are desirable.

Legislative History of the Securities Act

1919—During the campaign for the sale of the Victory Bond issue, the Treasury Department discovered that a speculative movement in Western oil and mining stocks was interfering with the Victory Bond sales.

The then Secretary of the Treasury, Carter Glass, now United States Senator from Virginia, called on the Federal Trade Commission to assist him. After obtaining an opinion from the Department of Justice as to its jurisdiction, the Commission set up the necessary machinery by organizing a "Blue Sky" division of the Commission and for some time was successful in breaking up "wild-cat" stock sales.

1920—Experience convinced the members of the Federal Trade Commission that Federal legislation was necessary for the regulation of security selling. Most states had "Blue Sky" laws, but these laws could not cover interstate transactions. The Commission therefore, with the aid of Representative Edward Taylor, of Colorado, drew up a bill which was duly introduced in the House by Mr. Taylor. This measure followed the laws of Great Britain, France, Germany and Japan. It provided, in brief, for the filing with the Federal Trade Commission of certain information before any securities could be offered for sale in interstate commerce, and held those signing personally responsible for any misstatements.

The Taylor bill was followed by the Dennison, Volsted, LaGuardia and other similar bills, none of which was passed by Congress.

1930—The National Conference of Commissioners of Uniform State Laws met at Chicago and, on August 18, approved a draft of a Uniform Sale of Securities Act. This Act was also approved by the American Bar Association at its annual meeting at Chicago, August 20.

1932—Huston Thompson, a member of the Federal Trade Commission during the Wilson Administration and now a practicing attorney in Washington; Daniel C. Roper, now Secretary of Commerce; and A. Mitchell Palmer, Attorney General under President Wilson, drafted a plank for the Democratic Presidential platform promising securities legislation. Following is the text of that plank, as adopted by the Chicago Convention:

We advocate protection of the investing public by requiring to be filed with the government and carried in advertisements of all offerings of foreign and domestic stocks and bonds true information as to bonuses, commissions, principal invested, and interests of the sellers.

Regulation to the full extent of federal power of

(a) Holding companies which sell securities in interstate commerce;

(b) Rates of utility companies operating across state lines;

(c) Exchanges in securities and commodities.

1933—Early in the Roosevelt Administration conferences were held by the President with various prominent Democrats on financial and stock market legislation. As a result it was decided to handle the matter by introducing three separate bills.

The first of these became known as the Glass-Steagall Banking Bill; the second, the Federal Securities Bill, and the third, the Stock Market Control Bill.

The task of preparing the draft of the Securities Act was given to Huston Thompson, who drew the bill along the lines of the Taylor bill, which had been introduced in the House in 1920; the British Corporations Act and the Belgian Law. He took, also, features from the Dennison and Volstead bills.

What was sought to be accomplished by the bill, was set forth by Mr. Thompson as follows:

On March 29 President Roosevelt sent to Congress the following message:

"To The Congress:

"I recommend to the Congress legislation for Federal supervision of traffic in investment securities in interstate commerce.

"In spite of many States statutes the public in the past has sustained severe losses through practices neither ethical nor honest on the part of many persons and corporations selling securities.

"Of course, the Federal Government cannot and should not take any action which might be construed as approving or guaranteeing that newly issued securities are sound in the sense that their value will be maintained or that the properties which they represent will earn profit.

"There is, however, an obligation upon us to insist that every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information, and that no essentially important element attending the issue shall be concealed from the buying public.

"This proposal adds to the ancient rule that caveat emptor the further doctrine 'let the seller also beware.'

"It puts the burden of telling the whole truth on the seller.

"It should give impetus to honest dealing in securities and thereby bring back public confidence.

"The purpose of the legislation I suggest is to protect the public with the least possible interference to honest business.

"This is but one step in our broad purpose of protecting investors and depositors.

"It should be followed by legislation relating to the better supervision of the purchase and sale of all property dealt in on exchanges, and by legislation to correct unethical and unsafe practices on the part of officers and directors of banks and other corporations.

"What we seek is a return to a clearer understanding of the ancient truth that those who manage banks, corporations and other agencies handling or using other peoples' money are trustees acting for others.

"FRANKLIN D. ROOSEVELT."

On the same day identical bills, as drawn by Mr. Thompson, were introduced in the House (HR 4314) and in the Senate (S 875).

On March 31 the Senate Committee on Banking and Currency began hearings on S 875, continuing through April 6.

On April 1 the House Committee on Interstate and Foreign Commerce began hearings on HR 4314, continuing through April 4 and 5.

After the hearings were concluded the House Committee members began redrafting the original bill with the assistance of Mr. Thompson; Robert Z. Healey, Chief Counsel, and Henry Miller, of the Federal Trade Commission; Ollie M. Butler and Walter L. Miller, of the Department of Commerce; Professors Felix Frankfurter and James M. Landis, of the Harvard Law School, and Benjamin M. Cohen, a New York attorney. (Professor Landis was later appointed a member of the Federal Trade Commission.)

On April 27 the Senate Committee on Banking and Currency reported S 875 in amended form, having stricken out all but the enacting clause, and substituted new matter.

On May 1 S 875 bill was called up in the Senate, but because of the small attendance was passed over.

On May 3 Representative Rayburn, Tex., D., Chairman of the House Committee on Interstate and Foreign Commerce, introduced a new bill, HR 5480, which had been drafted by the Committee as a substitute for HR 4314, the Thompson bill.

On May 4 the new bill was formally reported to the House by the Committee.

On May 5 HR 5480 was considered by the House under a special rule limiting debate to five hours and was passed.

On May 8 Senator Fletcher, Fla., D., Chairman of the Senate Committee on Banking and Currency, called up S 875, as amended, and, after a few hours discussion in the Senate it was passed. Since there were differences between the House and Senate bills, they were sent to conference.

On May 22 the Senate adopted the conference report and on May 23 it was adopted by the House.

On May 25 the bill was sent to the President, and on May 27 the President signed it and it became Public Law No. 22, Seventy-Third Congress.

Purposes and Provisions of the Act

THE purpose of the Federal Securities Act is to protect the investing public and honest business. The basic policy is that of informing the investor of the facts concerning securities to be offered for sale in interstate and foreign commerce and providing protection against fraud and misrepresentation.

The aim is to prevent further exploitation of the public by the sale of unsound, fraudulent, and worthless securities through misrepresentation; to place adequate and true information before the investor; to protect honest enterprise, seeking capital by honest presentation, against the competition afforded by dishonest securities offered to the public through crooked promotion; to restore the confidence of the prospective investor in his ability to select sound securities; to bring into productive channels of industry and development capital which has grown timid to the point of hoarding; and to aid in providing employment and restoring buying and consuming power.

The principal duty of carrying out the purposes of the Act is placed upon the Federal Trade Commission. It is intended that those responsible for the administration and enforcement of the law shall have full and adequate authority to procure whatever information may be necessary or material in carrying out the provisions of the bill. It has been deemed essential to refrain from placing upon any Federal agency the duty of passing judgment upon the soundness of any security. Moreover, care has been taken to prevent the public from being led to believe that the Federal Government under this law passes upon the soundness of any security, and to represent that any security has been so approved as to its soundness is declared to be unlawful.

The bill is intended to be self-sustaining through the payment of filing fees of one one-hundredth of 1 per cent of the value of the securities registered with a minimum of $25. This fee is, of course, to be covered into the Treasury of the United States.

The bill contains six main features:

1. Registration of information with the Federal Trade Commission.
2. Supervision of advertisements of securities.
3. Revocation and suspension of registration.
4. Exemptions.
5. Personal responsibility.
6. Remedies in case of fraud.—*Extracts, see 3, p. 160.*

The Federal Trade Commission— Its Powers and Procedure

THE Federal Trade Commission was created by an act of Congress approved September 26, 1914, in which the commission's powers and duties were defined. The commission is an independent agency, with its five members appointed for a term of seven years each by the President of the United States with the approval of the Senate. No more than three members may be of one political party.

Further powers are conferred upon this commission by "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), and by "An act to promote export trade, and for other purposes," approved April 10, 1918, known as the export trade act (Webb-Pomerene law).

Section 5 of the Federal Trade Commission act declares that "unfair methods of competition in commerce are hereby declared unlawful" and empowers and directs the commission to prevent "persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce."

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect. Provision is made for hearings and the taking of testimony. If the commission shall then be of the opinion that the method of competition in question is prohibited by this act, it shall issue and cause to be served upon the person or organization against whom complaint is made an order to cease and desist from using such unfair method of competition as shown to be sustained by the proof submitted.

Provision is made for appeal to the Circuit Court of Appeals of the United States to enforce, set aside, or modify orders of the commission. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in the Judicial Code.

A letter to the commission stating what the writer believes to constitute the employment of unfair practices by some concern is sufficient to institute a possible proceeding under section 5 before the commission. If the letter clearly discloses that nothing is charged within the jurisdiction of the commission, it is filed without further action. If it appears, however, that there may have been such a violation of law, the matter is settled, after further investigation, by dismissal of the charges, or by stipulation and agreement with the concern named in the letter, or by the issuance of a formal complaint followed by a formal trial of the charges, as required by the facts of the particular case and by the public interest.

Stipulations setting forth the unfair practices used by the concern named and agreements to discontinue their use voluntarily are entered into where the public interest does not require formal action, for example, where the concern in question agrees to discontinue the unlawful practices. Stipulations and agreements are not entered into in those cases where a fraudulent business is concerned, where the conduct of a legitimate business in a fraudulent manner is concerned, where the circumstances are such that there is reason to believe that an agreement entered into with the concern involved will not be kept, or where for any reason it is believed that the public interest will be better served by the institution of a formal complaint and proceeding. Digests of such stipulations and agreements are published after omitting the names of the proposed respondents.

A formal proceeding, instituted by a formal complaint and followed by the taking of testimony, filing of briefs, and oral argument, is terminated by the entry of a formal order to cease and desist or by a formal order of dismissal. Such a proceeding is prosecuted in the name of the commission by the chief counsel's division and testimony and evidence in such proceeding are proffered before a member of the trial examiner's division, who is charged with passing upon the testimony and evidence and with other details incident to the trial of the case. No formal complaint is issued, except where incompatible with the public interest or clearly not called for by the circumstances of the case, until the concern named in the complaint has been given an opportunity to appear before the board of review of the commission and present its side of the case and in certain cases to stipulate the facts and have the matter dismissed without publicity.

Investigation in the preliminary stages is largely the function of the chief examiner's office.

In speaking of the commission's activities in dealing with unfair methods of competition mention should also be made of what has become known as the trade practice conference, which affords, broadly stated, a means through which representatives of an industry voluntarily assemble, either at their own instance or that of the commission, but under auspices of the latter, for the purpose of considering any unfair practices in their industry, and collectively agreeing upon and providing for their abandonment in cooperation with and with the support of the commission.

Under section 6 the Federal Trade Commission derives its authority for making economic investigations. It is provided that the commission shall have power to gather and compile information concerning, and to investigate from time to time the organization, business conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce; and that it may require reports and answers to specific questions in the compilation of such information.

Under these powers the commission has conducted many economic inquiries, chiefly at the request of the President, the Senate, or the House, to whom reports have been made, and has gathered and published for the

use of the Congress, the executive departments, and the public, a great deal of information regarding many of the essential industries of the country. Occasionally the commission carries on investigations on its own initiative under these powers, as in the present instances of inquiries into the subject of resale, price maintenance, sale of so-called blue sky securities, and price bases used in quoting and selling articles and commodities by manufacturers and distributors.

The commission also has power under section 6 to investigate violations of the antitrust acts by any corporation, upon the direction of the President or either House of Congress. Among the more important inquiries under way in 1929, under this power, were those dealing with power and gas utility corporations, open price associations, chain store industry, newsprint paper industry, cottonseed crushers and oil mills, and peanut crushers and mills.

The commission is also empowered under section 6 to investigate the manner in which final decrees that have been entered in suits to restrain violations have been carried out, either upon its own initiative or at the request of the Attorney General, to whom it must report in the matter; to make such reports public; to investigate from time to time trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions may affect the foreign trade of the United States; and to make public from time to time such portions of the information obtained by it as it shall deem expedient in the public interest, except trade secrets and names of customers.

Section 7 of the Federal Trade Commission act provides that in any suit in equity brought by or under the direction of the Attorney General, as provided in the anti-trust acts, the court may refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein.

Other sections of the act give to the commission authorization for such investigations and the compilation of data, with provision for procedure under the act, and penalties prescribed for refusal of persons, partnerships, or corporations to furnish such material or to comply with orders of the commission to testify, produce evidence, or file reports, as required.

It will be seen that under the Federal Trade Commission act the powers and duties of the commission are both legal and economic. These powers include measures for the prevention of unfair competition and violation of the Clayton law. Investigatory powers include economic studies of domestic industry and interstate and foreign commerce. Such economic inquiries may be inaugurated by the commission of its own initiative, but are more frequently undertaken by direction of the President or the Senate or the House of Representatives.

The commission is given jurisdiction over violations of sections 2, 3, 7, and 8 of the Clayton Act, which prohibit:

(1) Certain discrimination in prices between different purchasers of commodities where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(2) In certain cases, so-called, "tying contracts," or contracts whereby, as a condition of sale or lease, the seller or lessor exacts from the purchaser or lessee an agreement that he shall not use or deal in the goods or other commodities of a competitor of the lessor or seller, where the effect of such agreement may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(3) In certain cases so-called "holding companies" or the ownership by one company of the stock of another, where the effect may be to substantially lessen competition between the companies, to restrain commerce, or tend to create a monopoly.

(4) So-called "interlocking directorates" in cases where one person shall at the same time be a director in any two or more corporations engaged in interstate or foreign commerce, other than banks, banking associations, trust companies, and common carriers subject to the act to regulate commerce, if such corporations are or have been competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws.

Procedure under the Clayton Act is, with some exceptions, identical with that under the Federal Trade Commission act.

The export trade act authorizes the formation of "associations" entered into for the sole purpose of engaging in export trade, these associations to be exempt from the anti-trust laws of the United States, with the proviso that there shall be through the association no restraint of the export trade of any domestic competitor, no enhancing or depression of prices, or substantial lessening of competition within the United States.

Section 1 of the act defines "export trade" and "association."

Sections 2 and 3 provide exemption from the anti-trust laws under certain conditions.

Section 4 extends the jurisdiction of the commission under the Federal Trade Commission act to "unfair methods of competition used in export trade against competitors engaged in export trade even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."

Section 5 provides for the filing of papers by such export trade associations with the Federal Trade Commission, and other details of administration.

The policy of the commission is not to entertain proceedings of alleged unfair practices where the alleged violation of law is a purely private controversy redressable in the courts except where said practices substantially tend to affect the public. In cases where the alleged injury is one to a competitor only and is redressable in the courts by an action by the aggrieved competitor and the interest of the public is not substantially involved, the proceeding will not be entertained.

In accordance with the foregoing, the commission amended paragraph 3, of subdivision 2, of the Rules of Practice, headed "II. Complaints," by inserting after the word "jurisdiction" the following: "and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public."

The commission also adopted the following as its policy in the handling and settlement of cases:

"The end and object of all proceedings of the Federal Trade Commission is to end all unfair methods of competition or other violations of the law of which it is given

Continued on page 156

The Present Membership of the Federal Trade Commission

GARLAND S. FERGUSON, JR., of North Carolina, Chairman of Federal Trade Commission; lawyer, born in Waynesville, North Carolina, May 30, 1878, son of Garland S. Ferguson, former judge of Superior Court of North Carolina; married Margaret Merrimon, of Greensboro, N. C.; attended United States Naval Academy and University of North Carolina, graduating in law from the University, 1900; practiced law in Waynesville, 1900-1902; in Greensboro, North Carolina, 1902-1918; referee in bankruptcy, U. S. District Court, Western District of North Carolina, 1908-1918; assistant division counsel, Southern Railway, Greensboro, 1908-1918; assistant general counsel, Newport News Shipbuilding Company, Washington, 1918-1921; resumed practice of law in Greensboro, 1921; appointed by President Coolidge member of Federal Trade Commission, November 12, 1927, for term ending September 25, 1934, succeeding Commissioner John F. Nugent; entered on duty November 14, 1927; Chairman of Federal Trade Commission, 1930; Democrat.

EWIN LAMAR DAVIS, of Tennessee, Member of the Federal Trade Commission; born, Bedford County, Tennessee, February 5, 1876; educated in various schools, including the famous Webb School of Bellbuckle, Tenn., and Vanderbilt University; graduated from Columbian University Law School in 1899 with degree of LL.D.; began active practice of law in 1899; married Miss Carolyn Windsor, of Americus, Georgia, in 1898 and has five children; legal residence, Tullahoma, Tenn.; presidential elector in 1904; judge of the Seventh Judicial Circuit of Tennessee, 1910 to 1918; chairman of the district exemption board for the middle district of Tennessee, 1917 and 1918; elected to the Sixty-Sixth, Sixty-Seventh, Sixty-Eighth, Sixty-Ninth, Seventieth, Seventy-First and Seventy-Second Congresses; Chairman, Committee on Merchant Marine, Radio, and Fisheries during Seventy-Second Congress; appointed by President Roosevelt as member of Federal Trade Commission, May 23, 1933, for a term ending September 25, 1939, succeeding Commissioner C. W. Hunt; entered on duty May 26, 1933; Democrat.

JAMES M. LANDIS, of Cambridge, Massachusetts, Member of Federal Trade Commission; born in Tokyo, Japan, September 25, 1899; son of the Rev. Henry M. Landis, Presbyterian missionary; married Miss Stella Galloway McGehee, of Woodville, Miss.; graduated from Princeton University, receiving degree of Bachelor of Arts, 1921; Harvard, Bachelor of Laws, 1924; Harvard, Doctor of Juridical Science, 1925; served as law clerk to Mr. Justice Brandeis of the United States Supreme Court; professor of legislation, Harvard Law School; published, 1927, with Prof. Felix Frankfurter, "The Business of the Supreme Court"; published, 1930, with Samuel Williston, "Commercial Law," and "Negotiable Instruments"; edited, 1931, in collaboration with committee, "Selected Readings on the Law of Contracts"; contributed series of articles to legal periodicals; contributor to the Encyclopedia Britannica, Fourteenth Edition; contributor to the Encyclopedia of Social Sciences; served as special adviser to Federal Trade Commission in setting up its administration of Securities Act; appointed by President Roosevelt as member of Federal Trade Commission, succeeding Commissioner Raymond B. Stevens, October 7, 1933; entered on duty October 10, 1933; Democrat.

GEORGE C. MATHEWS, of Madison, Wisconsin, Member of the Federal Trade Commission; born in Worth County, Iowa, February 22, 1886; attended grade and high schools, Burlington, Wisconsin; graduated, University of Wisconsin, 1908, receiving degree of Bachelor of Arts; one year graduate work, assistant on university faculty; instructor, 1909-1910, Oregon State Agricultural College, Corvallis, Oregon; married Miss Bertha Gesell, of Alma, Wisconsin, 1912; rate investigator, Wisconsin Railroad Commission; statistician-in-charge of public utility rate and accounting work, 1912-1916; associated with Andersen, DeLany & Co., public accountants, Chicago, 1916-1917, returning to Wisconsin Railroad Commission, 1917; while with the Commission, served as professor of public utilities at Northwestern University, School of Commerce, Chicago, 1924-1925; took charge, February, 1925, of administration of Wisconsin securities law in addition to other work for the Commission; while chief of securities division, 1931, was appointed Commission chief examiner; left the Commission, June, 1933, to assist receivers of Middle West Utilities Company, Chicago, becoming vice president in charge of rates; member of National Association of Railroad and Utilities Commissioners committee which drafted uniform classification of accounts for electric and gas utilities and of the committee on telephone depreciation; contributor to economic journals; appointed by President Roosevelt as member of Federal Trade Commission, October 7, 1933; entered on duty, October 27, 1933; Republican.

CHARLES H. MARCH, of Minnesota, Member of Federal Trade Commission; lawyer; born, October 20, 1870, at Litchfield, Minnesota; son of Nelson J. and Jane (Morrison) March; admitted to Minnesota bar, 1904, and later to practice in United States Supreme Court; served as mayor of Litchfield and chairman of public library board; organized Fourth Minnesota regiment of militia and was elected as its colonel; served as member of State Commission of Public Safety, a board consisting of the Governor, Attorney-General and five members having broad powers in carrying on state government during World War period; president, Farmers and Bankers Council of Minnesota; married Aimee Wells, of Morris, Minnesota, 1899; children, Mrs. Chris Christiansen, Wells March, and Charles Hoyt, Jr., appointed member of Federal Trade Commission by President Coolidge, January 18, 1929, for term expiring September 25, 1935, succeeding Commissioner Abram F. Myers; entered on duty, February 1, 1929; Chairman of Federal Trade Commission, 1933; appointed member Special Industrial Recovery Board by President Roosevelt, June 17, 1933; Republican.

Should the Federal Securities Act of 1933 be Modified?

PRO — **Arguments Favoring**

Committee on Securities Regulation

Chamber of Commerce of U. S.

In considering the practical situation created by the Federal Securities Act of 1933 this Committee is mainly concerned with the protection of investors and of the legitimate business interests of the country. The principal question is whether in the public interest this Act should be amended now.

The legislation, adopted nine months ago, was intended to protect the public, "with the least possible interference to honest business." Sufficient time has elapsed to demonstrate that, while some financing can proceed under the Act, the outstanding defect of the legislation is to make practically impossible much financing that is necessary for economic recovery and for the orderly conduct of business enterprises of integrity.

In our judgment it is urgent that amendments be adopted in the present session of Congress that will permit of indispensable financing and also support the basic policy of requiring that full and adequate information concerning new securities be supplied to prospective investors.

The most important economic aspects of the present situation are:

First—There has been a virtual cessation of high-grade and sizable corporate issues in the period the Act has been in full force. Capital funds, necessary for the maintenance and increase of employment, and procurable only from the flotation of securities, have not been forthcoming.

Second—Unless the Act is properly modified, there is little, if any, prospect of the origination and sale of new and refunding corporate issues in needed volume. Without the issuance and sale of such securities recovery will be delayed, if not prevented.

The first effect is apparent from a comparison of the volume and kind of issues in the first seven months of last year, before the Act was in full force, with those in the subsequent five months when the Act was in operation.

In January and February of this year only $12,000,000 of short-term issues were brought out. All were privately placed; none was registered under the Securities Act. In those months there were floated only $7,000,000 of stock and $5,000,000 of refunding issues.

Issues actually brought out are to be distinguished from those merely contemplated (such as securities registered with the Federal Trade Commission) and which may or may not be sold. They indicate an almost complete stoppage of corporate financing during the last five months of 1933, as compared even with the relatively small volume of issues offered during the first seven months which included the period of uncertainty prior to and during the banking moratoria in February and March. In contrast, it should be noted that non-corporate flotations consisting mainly of securities of state and municipal governments, which are exempt from registration under the Securities Act, showed no comparable decline. Non-corporate issues amounted to $363,000,000 for the period January 1-July 31, while those for the remaining five months of 1933 totaled $309,000,000.

While many factors, including monetary uncertainties, had an undoubted bearing upon the market for capital issues during 1933, the large sales of federal, state and local issues of securities demonstrated that substantial amounts of money were seeking investment. Likewise, the rising prices of private corporate obligations already outstanding show that there is a demand for that class of obligation as well as for tax-exempt securities. The volume of maturing obligations that were met by bank loans or reduction of corporate capital and temporary deferment or refunding are matters of common knowledge. The decline in the volume of refunding issues in the last five months of the year notwithstanding the large maturities is significant. The absence of refunding offers while large refinancing was clearly necessary is anything but healthy.

The second effect, namely, that new corporate issues will not be offered and sold in needed volume, is necessarily a matter of opinion. It is unquestioned, however, that much refinancing of commercial and industrial enterprises must be undertaken if employment is to be maintained, let alone increased. Such capital financing is especially necessary in connection with production and distribution of capital goods—the field of business in which employment lags most—for financing maturing obligations, for the replacement of obsolete plant and equipment and for needed reorganizations.

It is axiomatic that the increase of business and the general economic welfare of the country after a period of depression is effected mainly by increasing the employment of labor and capital. The gainful employment of a large proportion of American labor depends upon the production and use of durable and capital goods which require long-term investment in contrast to bank loans. This capital financing, which permits the development of new equipment, goods and services, and the introduction of new sales efforts, has been a principal aid in the past to recovery from a depression.

Our inquiries of industrial and commercial firms, financing houses, accountants, attorneys and others, disclose a general belief that the Act in its present form is so severe and uncertain in its consequences as to be prohibitory of normal financial transactions. Few will venture to originate and market new or refunding issues

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Should the Federal Securities Act of 1933 be Modified?

Arguments Opposing

CON

by
James M. Landis
Member Federal Trade Commission

MISCONCEPTIONS about the Securities Act and its effects seem to abound. Like the passions aroused by some of our causes celebre in this country, the Securities Act is tending to divide its opponents and adherents into separate camps. Studied and colorless consideration of the nature of the Act and the character of its effects has, in the main, been lacking. Such intemperate attitudes to this most complex problem of the control of corporate financing are nothing short of a tragedy. And if the issue develops, as it now threatens to develop, into one of the public against the bankers, instead of that of a consideration of the best interests of the public—a concept which still includes the banking group—what legislation will evolve out of such an emotional tempest is certain to be both unwise and impractical.

This attitude that now threatens, is so different from that which prevailed as of the time of the birth and passage of the Securities Act. The President's message calling for federal security legislation and outlining the basic principles that should be embodied in such legislation has yet to find any critic. No opposition to the President's aims was voiced at the hearings on the bill, which were wholly devoid of any sensationalism. Some five weeks of what might properly be termed unremitting labor by a subcommittee of the House were spent in working over the details of the legislation before the bill emerged from committee. With one exception, its passage through the House as well as the passage of the companion bill through the Senate evoked no dramatic speeches, no threat of retaliation against a class. Those who had the opportunity to watch the progress of this bill at close range could not fail to be impressed with the earnestness, sincerity and competence of those members of the House and of the Senate who had the bill in charge. I cite these facts merely as illustrative of a Congress with its emotions unaroused but deeply conscious of the evils which unrestrained exploitation of our capital resources had brought into existence.

One other characteristic of the framing of the Securities Act deserves notice. It is customary for some critics to regard the Act as the product of a single session of Congress, to attribute its authorship to individuals, to think of it as new and hastily drawn legislation. Nothing is farther from the facts. The experience of many years and of many nations is epitomized in the provisions of the Securities Act. Many of its features, with variations suitable to the form of financing in this country and to the constitutional limitations upon federal power, have been drawn from the English Companies Act, which represents the culmination of almost a hundred years of struggling with this problem abroad. Since 1911 most of our forty-eight states have been developing forms of security legislation and much of the experience of these states has gone into the federal act. More specifically the work of the Capital Issues Committee during the War led to the introduction of a bill in Congress, known as the Taylor Bill, whose basic outlines are essentially similar to those of the Securities Act. Later the Denison bill, devised primarily to make more effective state security regulation, actually passed the House but failed of action in the Senate. In other words, the Securities Act embodied little that was novel in conception, nor did it emanate from a Congress that for the first time had been called upon to consider the problem of security regulation.

I need spend little time in outlining the principal features of the Securities Act. Rather I shall assume a knowledge of its basic features and use my time in discussing a problem that seems to give the most concern. This is the problem of civil liability. What liability there exists for damages for violation of the Act comes as a result of the provisions embodied in Sections 11 and 12, but I intend to limit myself merely to a discussion of Section 11, the section that imposes liabilities consequent upon misstatements in a registration statement.

The suggestion has been made on occasion that civil liabilities arise also from a violation of Section 17, the first sub-section of which makes unlawful the circulation of falsehoods and untruths in connection with the sale of a security in interstate commerce or through the mails. But a reading of this section in the light of the entire Act leaves no doubt but that violations of its provisions give rise only to a liability to be restrained by injunctive action or, if wilfully done, to a liability to be punished criminally. That such a conclusion alone is justifiably to be drawn from its provisions is a matter upon which the Federal Trade Commission has already made a pronouncement, the authoritative quality of which I shall have occasion to consider later.

Turning now to Section 11,—the section from which liability arises as a result of misstatements in the registration statement—it is worth our while carefully to analyze its content from several angles: (1) the persons upon whom it imposes liability; (2) the standards of conduct that it insists these persons shall observe in order to be immune from liability; (3) the damages that flow from a violation of its provisions.

Broadly speaking, the persons upon whom liability may be imposed can be divided into five groups: (1) the issuer; (2) the directors of the company, whether or not they have signed the registration statement; (3) the chief officials of the company; (4) experts, such as accountants, engineers, appraisers, and any person whose profession gives authority to a statement made by him—a phrase

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of merit. This appears to be the fact even after full allowance is made for needless and unwarranted fears concerning some provisions that have been brought into question.

It would take years and much litigation to clarify the Securities Act by judicial interpretation. It is doubtful whether even such a slow and expensive process would develop a body of law of the degree of certainty that is indispensable when property values are at stake.

The present and probable future effects of the Securities Act in retarding economic development are mainly attributable to the nature, extent and duration of the civil liabilities which it imposes upon officers, directors, underwriters, experts and others.

In furtherance of a purpose to supply investors with full and adequate information with respect to securities offered to them, the Act requires the registration in Washington of a long and intricate schedule of information (known as the registration statement) upon all facts concerning the issue and the affairs of the issuer which, according to the statute and the regulations of the Federal Trade Commission, are deemed to be in any manner, directly or indirectly, enlightening. It is also necessary to provide a prospectus in the form required by the Act and to deliver a copy of the prospectus to prospective purchasers of the security.

The power to enforce compliance with its requirements as to information to be contained in the registration statement, prospectus and publicity is given to the Federal Trade Commission, and an effort is made to give remedies to the original and succeeding purchasers of a security in event any of these required documents contain misstatements. In addition to the civil liabilities, criminal penalties are provided for failure to comply with the Act and the regulations of the Commission.

If the registration statement contained an "untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading," any person acquiring the security (unless it is proved at the time of such acquisition he knew of such untruth or omission) may sue the issuer, its principal officers, its directors and every participating underwriter. He may also sue any expert, who with his consent is named as having prepared any part of the registration statement or any report or valuation used in connection therewith, with respect to any statement contained in the part, report or valuation he prepared.

The civil liabilities are so extreme that prudent men hesitate or are unwilling to subject themselves to the risks which would be involved in a public issue of securities. These liabilities exist even though due care be used to make honest statements.

No defense is permitted to the issuer, but any other person may be relieved of liability upon sustaining the burden of proof that after reasonable investigation he had reasonable ground to believe and did believe that the statements were true and that there were no omissions. The standard of reasonableness required is that of a person "occupying a fiduciary relationship." If, however, the statements are those of an expert, no investigation is required.

The purchaser is not required to prove that he relied on the registration statement or on the prospectus and he may recover even though his purchase was not made by the use of the mails or in interstate commerce or from any persons made liable. It would appear that he may recover damages even if they were not caused by the untrue statement or omission, depending upon the unknown legal effect of the use of the words "material fact."

Officers, directors, underwriters, experts and others may be held to be jointly and severally liable and the recovery may be in the form of rescission if the purchaser still holds the security or in the form of damages if he has disposed of the security. In other words, these parties (which ordinarily include persons who made no sale) may be compelled to take back part or all of the securities and repay the full purchase price even if the securities have depreciated because of declining markets or other reasons not connected with the assertion or omission in the registration statement.

Beyond the penalties which attach to misstatements or omissions above referred to, any person, even one acting in a private capacity, who *sells* a security—that is not specifically exempted by the Act—either in interstate commerce or by the use of the mails by means of a prospectus or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement in the light of the circumstances under which it was made, not misleading, is also liable to the purchaser. Again the purchaser is given the right to bring an action to rescind the transaction if he retains the security or to recover damages if he has disposed of it. If it can be proved, however, that the purchaser knew of the untruth or omission or that the seller did not know of same and in the exercise of reasonable care could not know of it, the liability does not attach.

The statutory period within which actions may be maintained to enforce rescission or damages in an action arising out of a registration statement, prospectus or communication is two years after the discovery of the untrue statement or the omission or after such discovery should have been made by the exercise of reasonable diligence, but subject to those conditions recovery may be had any time within ten years after the security is in fact offered to the public.

It is provided that every person who by or through stock ownership, agency or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency or otherwise, controls any person made subject to the civil liabilities is jointly and severally liable with and to the same extent as such controlled person and is allowed no defense in his own right.

Concurrent jurisdiction of suits brought under the Act is given to state and federal courts and the right to remove from a state court to a federal court is denied.

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which, as a matter of pride for the profession, would, I hope, include the lawyer; and (5) the underwriters of the issue, remembering always that the legal and not the dictionary meaning of that term is involved. Though all these persons may be liable for misstatements in a registration statement, it is utterly erroneous to assume that because there is a misstatement all these groups of persons are liable. To make that apothegm clear, it becomes necessary to examine the standards of conduct required to be observed by these groups of persons.

An understanding of that standard seems to me essential to a clear picture of this liability. It must be understood from three standpoints, or, in other words, three questions must separately be asked. The first is this: Was there the required misstatement or the required omission? No difficulty is raised in determining whether or not a misstatement has been made, but the requirements of the Act relative to omissions have been the source of much—I am tempted to say—ingenious confusion. Omissions in order to be a ground for liability must, in the language of the statute, be omissions to state facts required to be stated in the registration statement or necessary to make the statements in the registration statement not misleading. In non-technical language, this, as the history of the Act amply demonstrates, means simply that a half-truth is an untruth, a fact that Congress, in its wisdom and with some experience in such matters, thought best to put beyond the power of sophist lawyers and judges to dispute. It is impossible, especially in the light of the Federal Trade Commission's exposition of this matter, to interpret this language to require an issuer at the peril of liability to state every fact which may be relevant to gauging the value of a security.

Cases of this character have commonly been put to develop the supposed dangers of that phraseology. Suppose that those associated with an issue are aware of a competitive process in the same field of manufacture as that of the issuer, but at the time reach a perfectly proper business judgment that the danger from the rival process is so slight that it can be ignored and therefore make no mention of that danger. A few years later it develops, however, that the competitive process proves its value and the issuer is driven to the wall. Is the business judgment of the directors and the officers to be reviewed some years hence by a jury viewing the situation from the hindsight of what happened rather than the foresight of what might happen? The answer to such and similar questions, whether fortunately so or not, is in the negative. Nothing in the registration statement calls for a statement of the position of the issuer in the general competitive structure of its industry and consequently omissions to state facts descriptive of this situation afford no basis for liability. The requirements of the registration statement alone are the basis for determining what statements must be made and therefore what omissions dare not be made. Beyond these requirements an issuer may, of course, go, but no requirement now calls for such statements to be made at the peril of liability.

I hope it is clear that I have discussed simply misstatements and omissions of facts without reference to the question of their materiality. Indeed, I have purposely done so, because this question seems to me the second of those that should be asked in connection with the standards of conduct that the Act requires should be observed, namely, assuming that there was a misstatement of fact or the required omission, did such misstatement or omission relate to a material fact? Let me repeat the phrase "material fact" again. It embraces two conceptions, that of fact and that of materiality. It may seem that the problem of what is a fact is one that has been unanswered by philosophers since the days of Plato. Though this may be true of philosophy, law in its ignorance has been called upon from time immemorial to distinguish between representations of fact and representations of opinion. The guiding line between these two conceptions rests upon the possibility of subjecting the conclusions in the respective realms of fact and opinion to definiteness of ascertainment. Much also depends upon the method of expression for what should appropriately be expressed as inferences or deductions from facts and hence as opinions, are too often expressed as facts themselves and hence for the purposes of legal liaiblity, whether at common law or under the Act, become facts. It has been said, and very rightly in my humble opinion, that most of accounting is after all a matter of opinion. But though this may be true, I have still to see the case of a prospective investor being offered a balance sheet and having it carefully explained to him that this or that item is merely an opinion or deduction from a series of other opinions mixed in with a few acknowledged facts. Accounting, as distinguished from law, has generally been portrayed as an exact science, and its representations have been proffered to the unlearned as representations of fact and not of opinion. If it insists upon such fact representations, it is, of course, fair that it should be burdened with the responsibility attendant upon such a portrayal of its results.

I turn now to the problem of materiality, for it is obvious that liability under Section 11 does not follow as a result of every misstatement. The misspelling of a director's name and other such matters could not conceivably carry liability. But what is material? Clearly materiality must be gauged with reference to purpose, and, recognizing that the purposes of the Act are the protection of the investing public, it does not become difficult to depict the standard of materiality. In other words, facts become material for the purpose of omissions and misstatements when, as a consequence of such omissions and misstatements, non-existent values are attributed to a security.

The third of the questions that I suggest must be asked in order to determine whether the standard of conduct prescribed by the Act predicates that answer to the other two questions has been in the affirmative. That is, assuming that there has been a misstatement or omission and that such a misstatement or omission has had reference to a material fact, is the person to be excused from liability because he exercised reasonable care under all the circumstances and entertained a reasonable belief that the statements he made were true? Reasonably, it should be borne in mind, will differ widely according to the person involved. Under some circumstances such a standard would require personal knowledge of the facts assumed to be true. Delegation to others of the duty to verify the

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No attempt is here made to discuss the constitutionality of some of these provisions although serious question may be raised as to whether or not their validity would be upheld. That they may ultimately be held unconstitutional does not prevent them meanwhile from operating to preclude capital issues that are greatly needed and in every sense desirable.

The liabilities far exceed those imposed in other countries. The current assertion that the Companies Act of England is more severe is erroneous. In England civil liability is imposed only for untrue statements and, by construction, for partial statements and some omissions. Directors there are not liable if they have reasonable ground to believe that the statements in a prospectus are true. The standard of reasonableness there is not that of fiduciary, and reliance on the prospectus must be proved by the purchaser. Damages there are limited to the injuries caused by the untrue statements and actions may be for damages only, not for rescission, although under the common law rescission may be enforced, but against the seller only and subject to the defenses that are permitted under the common law. Experts there are not liable, although underwriters are liable in the same way as directors if their names are signed to the prospectus. The information required there in connection with the prospectus is much simpler than that provided for by our statute and registration statement. There is no separate registration statement; a prospectus only is filed. The British Act contains provisions which by comparison are much simpler and utilize business terms in their ordinary meaning. Interpretation is left to the courts; there are no regulations by a governmental agency with broad powers of investigation.

It is unnecessary to exert the extreme penalties provided in the Federal Securities Act in order to compel proper disclosures to investors by issuers, officers, directors, underwriters, experts and others. The limitation of damages to those actually caused by the misstatements would be sufficient to secure proper performance, in view of the criminal penalties in the Act and the possibility of providing fines for minor infractions of regulations.

As it is now, a purchaser who may not even have examined a registration statement or prospectus, wholly apart from being in a position to prove reliance upon it, may be able to secure damages or restitution from persons with whom he did not deal and even though the statement or omission was not the cause of the loss or injury. General market conditions or statements or omissions proved to have arisen from a conception of negligence or of "reasonable investigation" under the theory of fiduciary responsibility imposed by the Act present such indefinite and large financial risks that few prudent persons will be inclined to be parties to the origination and offering of issues.

It is inequitable that for from two to ten years after the original offering of a security (which may change hands many times at varying prices) a holder or succession of holders should be permitted to bring an action in relation to a registration statement filed at the time of the original issue. This period should be narrowed to limits which have a definite and fair relationship to the influence of the registration statement and prospectus.

The Act fails to differentiate between underwriters who actually contract with the issuer or participate on a level with those so contracting and sub-underwriters who may purchase from such parties in order to distribute to the public. Sub-underwriters may consist of bankers and investment houses. One of them, participating to the extent of a few hundred thousand dollars, could be held responsible to all purchasers of the security up to the full amount of the issue which may be many millions, notwithstanding the fact that the commission be received may be negligible. This liability could be asserted against him even though his name did not appear on the offering prospectus and though he sold only a portion of his allotment. This is a practical bar to sub-underwriting which may be indispensable to provide a broad offering and good absorption. Various ways of curing this difficulty should be examined as, for instance, by limiting the right of recovery against a sub-underwriter, making him liable only if his name is signed to a prospectus and only to those who purchased from him directly in reliance of the statements over his name. It would seem also that sub-underwriters should be permitted to have a defense of reliance upon investigation made by original underwriters, otherwise hundreds of separate investigations would have to be made for the purpose of marketing an issue, thus duplicating the expensive inquiries which were incident to the origination.

The liabilities of the original underwriters, when they are not at the same time underwriters for marketing purposes, but act merely to insure the success of the financing by agreeing to take up any unsold part of the issue might be limited to those proper to place upon directors, in particular, to actual damages suffered by reason of the misstatements when reliance upon them is proved. It may be even better to relieve such original underwriters, provided they do not sell to the public, from all liabilities except those that they may undertake by contract with the issuers, when the terms of the contract are made known to the Federal Trade Commission.

In our opinion Congress should adopt, as soon as possible in the present session, amendments to the Securities Act which will overcome its effects in retarding the issuance of and transactions in legitimate securities that are necessary to restore employment and operating capital and provide for the continuance and development of the facilities of production and distribution.

It is widely recognized that ways must be found to aid transition from heavy governmental expenditures to more normal methods of recuperation, through release of private energies and funds. The volume of financing necessary to provide for large maturities in the next few years, without adding to the already great burden on the federal treasury, makes it imperative in aid of recovery that provision be made for a thoroughgoing revision of this hurriedly adopted law which is operating to the public detriment. It is a clear example of extreme action in a good cause.—*Extracts, see 5, p. 160.*

Landis, *Cont'd*

facts would under other circumstances suffice to meet the requirement. A director, for example, would have little excuse for not having personal knowledge of what his stock holdings in the issuer and its subsidiaries were, but he should obviously be entitled to rely upon the statements of his fellow directors, as checked by the stock books, as to what their stockholdings were. Furthermore, the director, who is also chairman of the board or chairman of some special committee, will stand in a different relationship as to the knowledge which is the special concern of his committee. Or take the situation of the underwriters. The type of investigation which can reasonably be demanded of the sponsoring or principal underwriters is one thing; that which the Act requires of the small participating underwriter in order that he shall satisfy its requirements is another thing, while an even less standard of investigation would be demanded of the dealer selling on commission who, because of his relationship to the issuer, is considered as an underwriter by the Act.

These conceptions permitting a reasonable delegation of duties by the various parties connected with the flotation of an issue, are not interfered with by that provision of Section 11 which likens the standard of reasonableness to be applied, to that which the law commonly requires of a person occupying a fiduciary relationship. That section does not make these individuals fiduciaries in and of themselves, but simply refers to that standard which, briefly stated, requires the exercise of a degree of care that a prudent man would exercise in his own affairs, as a measure of the type of conduct that in decency can be expected of those soliciting other peoples' money for investment.

Thus far we have discussed the persons made responsible for misstatements in the registration statement, and the standards of conduct that the Act calls upon them to observe. There remains the question of the nature of the damages for which these persons are responsible in the event that their liability otherwise is established. The first measure is what might be termed, somewhat inaccurately, the right of rescission. This is the duty to respond in damages equivalent to the price paid by the purchaser, never, however, exceeding the offering price, upon the tendor of the security. Two illustrations will make this clear. The offering price of a bond is $100. Purchaser A buys it on the market at $75; purchaser B at $125. A, upon tendering back the bond, could only recover $75, whereas B could only recover $100.

The Act also grants another right, which might appropriately be termed the strict right to damages. This can only be availed of by a purchaser who has disposed of the security. It is a right derivative in nature from the right of rescission. To illustrate its operation, we may turn to the case originally put and assume that A and B have disposed of their bonds on the market at $60. A, who had paid $75 for his bond, could recover $15, whereas B who had paid $125 for his bond recovers not $65 but $40.

It should be observed that such person whose liability on the registration statement has been established is responsible in damages to any purchaser of the security, whether such person shall have purchased from him or from some other person. Theoretically this means that each person so liable can be held to a liability equivalent to that of the total offering price of the issue. Practically, of course, no such large liability exists. Several factors will operate to keep the liability within much smaller bounds. For one thing, the value of a carefully floated issue can hardly be assumed to reach zero. For another, every purchaser would hardly be likely to bring suit. Again, the issue of liability—generally, a complicated question of fact—would be retriable in every suit, and it beggars the imagination to assume that every jury faced with such an issue would come to the same conclusion. Furthermore, each person liable has a right of contribution against every other person liable, unless the one suing is guilty of fraud and the other is not. So that even eliminating the other practical factors that I have mentioned, it would be necessary for every other person liable on the registration statement to be insolvent in order that one of them would be affixed with the large theoretical responsibility.

In elaborating upon these damages I have not, I believe, unduly minimized their character. But I have tried to look at them with some degree of reality rather than in the fanciful and unreal fashion that has characterized their exposition by some members of the legal profession. To pretend that they are insignificant is wrong; but as equally vicious is the practice, unfortunately too common, of conjuring up bogey men to frighten those who may wish to seek new financing through public issues. Not only does it discourage operation under the Act; but the bar when later faced with the task of defending those who may nevertheless register under the Act will be forced to do one of those volte-faces so humiliating to the legal profession. Its opinions upon maters such as this are too often dictated by the interests of its clients. In other words,—and here I voice a thought that I am afraid is likely to be misinterpreted, though the origins of this belief are of many years standing—the opinion of the bar reflects too accurately the condition of the capital market. Were it booming, were the bond market boiling, were there bankers eager to handle issues, the tendency of the bar, I suspect, would be to minimize the liabilities of the Securities Act. A leader of the New York bar, only recently dead, respected by all my generation for his refusal to think of his clients' causes as just when they were not, once remarked:

"When a client asks for my opinion he gets *my* opinion; if he wants a brief to uphold his interests, let him ask for a brief and not an opinion."

Were that attitude to characterize the legal advice now being given with respect to the Securities Act, many of the headaches of today and the heartaches of tomorrow might be avoided.

If, in the discussion of the question of damages, I have led you to believe that damages against the persons liable on the registration statement are compensatory in character, that is, that they compensate only for what damages may flow from the misstatements, let me disabuse you of that fact. Let me illustrate their non-compensatory character by a simple illustration. A careless misstatement of the quick asset position of a corporation justifies, let us say, the conclusion that had the facts been properly stated the offering price of a bond should have been 90 instead

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PRO

American Bar Association

No one will dispute the need for Federal legislation covering the distribution of securities, or the soundness of the principle that the buyer of securities is entitled to full information, and that issuers, directors and underwriters should assume responsibility for furnishing such information. But such legislation should recognize that, while the investor should be protected against dishonesty, he cannot be protected from the normal hazards inherent in all investment or from his own desire to speculate, and that the normal flow of capital essential to national economic life must continue. Does the Securities Act adequately recognize these principles?

The constitutionality of certain provisions of the Act is at least open to question. Are transactions in securities interstate commerce? Can intrastate sales in a registered security be made subject to the Act? Is it due process to impose liability for damages without regard to causation? Such questions are not within the scope of this report, and, for the purpose of this report, the Act is assumed to be constitutional.

The Act embodies the broadest definitions, uses the most general language, and is extraordinarily complex. As a result, the interpretation of many of its provisions is very vague and uncertain. It imposes drastic liabilities, in essence in terrorem, which are regarded by those made subject to them as unfair and unjustified. It radically alters the ordinary established machinery for the distribution of securities. It rides roughshod over legal principles which have been long established in our law, such as the ordinary principles as to causation, actions in rescission, limited corporate liability, agency, and the burden of proof.

There has been a great deal of discussion as to whether or not the Act has actually hindered the flow of capital through the distribution of securities. It is, of course, impossible to prove either side of this argument until the Act has been in effect for a longer period, but in view of the nature of the Act, as we have described it, it seems certain that the Act must operate as a hindrance, at least until it is clarified by judicial interpretation. In addition, the expressed unwillingness, which we believe is sincere, of directors, officers, bankers and accountants to accept the liabilities imposed, cannot be ignored. It is immaterial whether this unwillingness is based on exaggerated fears, as has been alleged. It is nevertheless a fact to be reckoned with. At the present time, at least, we believe the Act is a dfinite brake on recovery.

The statement that the Act is substantially the same as the English Companies Act has been frequently made. We do not believe that it is supported by the facts. Due to the different structure of the two Acts (the English Companies Act is primarily a corporation law and the Securities Act is moulded by the problems of limited Federal jurisdiction), a section by section comparison is impossible. There are many notable points wherein the English Act is less severe than the Securities Act. For example, the English Act provides that:

1. Civil liability is imposed only for an untrue statement. By court decisions this has been construed to include partial statements and certain omissions.

2. Damages are limited to those arising from the untrue statement.

3. Reliance on the propectus (which serves for both registration statement and prospectus under the English Act) must be proved by the purchaser.

4. Directors are not liable if they have reasonable ground to believe that the statements are true. There is no requirement for a "reasonable investigation" and the standard of reasonableness is not that of a fiduciary.

5. Underwriters are liable in the same way as directors, but, in substance, only if the prospectus is published over their names.

6. Experts are not liable.

7. Actions are for damages only, not for rescission (except at common law).

8. There is no separate registration statement. Copies of the prospectus must be filed, and must contain certain information. The information required is in some respects similar to that required by Schedule A and the present regulations of the Commission, but much simpler.

9. There is no 20-day or similar period which must elapse between the time of filing the prospectus and the offering.

10. The entire theory of administration is different. The English Act contains relatively simple provisions using business terms in their customary sense, and its interpretation is left to the courts. The Board of Trade has no powers in connection with these matters similar to those given to the Federal Trade Commission; there are no regulations, there is no bureaucracy.

It is obvious that the statement that the Acts are similar is at best only true in the most superficial way and is definitely misleading.

It has been suggested that the defects in the Act can be remedied by regulations adopted by the Commission. Even if Congress had given the Commission the maximum lawful powers to adopt regulations, we do not believe such powers would have been sufficient. As a matter of fact, the powers given the Commission are limited. The Commission has power to make rules and regulations necessary to carry out the provisions of the Act, including rules and regulations governing registration statements and prospectuses for various classes of securities and issues, and defining accounting and trade terms. It also has power to prescribe the forms on which required information shall be set forth and the items and details to be shown in balance sheet and earnings statements, and the methods of accounting to be followed (Section 19). The Commission also has power to require such additional information in the registration statement as may be necessary or appropriate in the public interest or for the protection of investors (Section 7).

We believe that the Act should be completely revised, after a careful investigation, with the aid of corporation directors and executive, bankers and lawyers familiar with the practical problems. We believe that such an investiga-

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Landis, *Cont'd*

of the 100 at which it was actually offered. For reasons utterly foreign to this misstatement and even beyond the possibility of conjecture at the time of the offering, the price of the bond declines to 30. A purchaser who bought at 100 could nevertheless, if he sold the bond at 30, recover from those liable on the registration statement the difference between 100 and 30, or 70.

This result, you may say, is unjustifiable. To that let me answer first that it represents no extraordinary principle of legal liability. Suppose that I buy an ordinary chattel from you for $100 upon your representation that it has certain qualities. It does not possess these qualities but the difference between the type of chattel that I bought and the type that you represented to me I was buying, can be measured by the sum of $10. Because of conditions that neither of us could have foreseen and over which neither of us had control, the market value of these chattels falls to $30. I can, nevertheless, as a matter of law, tender you back the chattel and recover $100. In other words, the general market loss of $60 falls not upon me as pucrhaser but upon you as seller.

A second justification for the principle of non-compensatory damages in the Securities Act is their *in terrorem* quality. If recent history teaches us anything, it discloses that some groups of persons associated with security flotations are not induced to refrain from material non-disclosures by fear either of the very real liability for compensatory damages at common law or fear of prosecution under the criminal law. True, my good friends tell me of a reformed investment profession, that refuses to take secret profits or refuses to manipulate a market to unload its own securities under the excuse of maintaining the market during the period of secondary distribution, or refuses to engage in practices that were too current during the boom times of another era. I devoutly hope that this is true. But the evidence of even a sudden conversion is lacking, wholly irrespective of its permanency. Examination of some of the security issues, both new and of the type that seek to effect readjustments of corporate capital structures, that hurriedly preceded the effective date of the Securities Act indicates that little change from earlier methods has taken place. Nor can anyone, who has watched carefully the amendments that have been made to registration statements now on file with the Commission, and seen the reluctance that accompanied the recital of certain very relevent but unpleasant facts in those same registration statements—sometimes only upon the threat of stop order proceedings—hold much of a brief for minimizing civil liability. And I speak here not merely of so-called fly-by-night issues, but of those prepared and sponsored by persons generally deemed by Wall Street to fall well within the bounds of respectability.

With this note, let me end my discussion of civil liability, even though there are aspects of it that are still untouched. But before closing, let me comment upon one other aspect of the Securities Act that I think is of special import, and this is the Commission's power of moulding the Act through administration, regulation and interpretation. The Commission's powers of regulation have rarely been emphasized in any discussion of the Act and to my mind they are of great consequence. Practically all accounting regulations are subject to the Commission's jurisdiction. The entire character of the demands that the registration statement makes depend upon the wise exercise of the Commission's powers within the very broad standards laid down by the Act. Relaxation or strengthening of these features of the Act lie within the control of the Commission. Furthermore, the Commission's power to define trade terms gives it extensive control, for hardly a term is not a trade term in view of the fact that its meaning is rightly signicant only in relation to the "trade" of floating securities.

Thus far the Commission has been very sparing in its use of these powers and wisely so, for it must learn, as all of us do, under the imparts of experience. But that experience is rapidly accumulating so that the time for close fitting of general expressions of the Act to typical complex situations is about ripe. Such regulations, it should be borne in mind, have the force of law. No right to review general regulations of this character, except to determine whether they fall within the delegated powers of the Commission, exists. They must, of course, supplement the general provisions of the Act, but they can make concrete and definitive the application of the Act to various recurring situations.

Again, the Commission has on occasion exercised the power of interpreting the Act. Such a power is incidental to that of administration. Such interpretative action has not, to be sure, the force of law, but it has always been recognized by courts as having large persuasive powers. Especially true is this under the Securities Act as distinguished from other situations in which administrative agencies exercise interpretative powers. There is an element of estoppel, as lawyers would say, present in this situation which is of great consequence in determining whether or not the courts would follow the Commission's interpretations. This element, to be explicit, consists in the fact of action in reliance upon administrative interpretation. In other words, the only rights created under the Securities Act, whether those rights are enforced by the state or the federal courts, are created by the United States Government. The United States Government, speaking this time through the agency of the Federal Trade Commission, says to an issuer—act in such a fashion and no rights, either criminal or civil, will be created against you. It would, indeed, be unusual if action in reliance upon such advice should be treated by another agency of the same government—the courts—as subjecting the party so advised to liability. This recognition of the fact of there being something akin to estoppel present in such action by the Commission, has naturally made the Commission, as distinguished from its divisional officials, chary of the exercise of these powers. Only two Commission opinions have thus far been rendered, and these naturally merely make more explicit what is already implicit within the Act.

I make these remarks upon the Commission's powers of regulation and interpretation not for the sake of emphasizing the powers as such but to illustrate the flexibilities inherent in the Act and its capacities for adaptation to the complexities of the situations it covers. Indeed, if half of the energy that has been expended in fulminat-

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Amer. Bar Ass'n. *Cont'd*

tion will make it apparent that the Act can be greatly simplified and clarified and that the substance of many provisions should be changed.

Such an investigation is a matter of many months. Pending such a revision, certain amendments should be made to the Act immediately in order to cure some of the obvious defects and to remove the brake on recovery.—. *Extracts, see 1, p. 160.*

J. F. Callbreath

Secretary, American Mining Congress

THE American Mining Congress, as a national organization, has very little interest in securities per se; it is interested in the production of ore, which requires that there shall be continual effort to develop new mines to take the place of those being exhausted.

The mining industry is a wasting industry; it is like a business in the hands of a receiver, because when its mineral reserves are exhausted its business is finished. It is therefore a business that is disposing of its assets and gradually retiring from business.

I do not refer to coal mines. My statement will relate to the mines of the West which produce metal. Gold is the basis of the most of these mining operations—silver, zinc, and other minerals being generally associated with gold. Unless there is a continuous effort made to produce new mines and to develop them to the point where large capital may interest itself, the time will come when the brains and labor and capital now engaged in these branches of the mining industry will be without an opportunity to work. Therefore we say any plan which interferes with the development of new enterprises is a plan which will not work well for this Nation.

We feel that there should be no impediment in the way of the prospector who discovers a prospective mine out in the mountains who wishes to find somebody who will help him develop that prospect to the point where it will be made available for large capital. If "blue sky" laws now in effect had been in effect at the time Cripple Creek was being developed, there would have been no Cripple Creek. No representative of the prospects which later became the Portland, the Vindicator, the Independence, or any of the large mines of Cripple Creek could have gone before any "blue-sky" commission in this Nation and gotten authority to raise money to develop them.

Old Coloradoans remember when old man Carl Wulsten, the Dutch Charlie who discovered Dutch Flats in California, was burned in effigy because he tried to raise money to develop what was afterwards the Stratton-Independent mine at Cripple Creek, which later produced many millions in gold.

Since that time Cripple Creek has produced practically half a billion dollars in gold.

I presume the worst fraud that has been practiced upon the American people in the past 25 years was the sale of German marks. It is boasted in Germany that they took out of the United States more money in the sale of their marks than they have paid in reparations.

It is provided in this bill that the securities of those governments with whom we have diplomatic relations shall be expected. German marks were sold in this country before we reestablished our relations with Germany. With 38 States having securities commissions that immense fraud was perpetrated upon our people.

The "blue sky" laws do not accomplish the purpose for which they are intended. But they have accomplished and are accomplishing the effect of throttling certain industries.

Since these "blue sky" laws came into effect the mining development of the West has almost ceased. The production of almost all kinds of minerals has fallen off. Railroads have been discontinued and towns practically deserted. The prospector who goes out into the mountains with his burro and his tools and his side of bacon and his sack of flour works for months and months, and perhaps years, always in his own mind a prospective millionaire, and who finally locates a claim which gives promise of being worth something has rights entitled to protection. Any law which prevents him from securing aid to develop that claim is against the best interests of the country. The prospector is usually a poor man, without money. After his discovery he most likely returns to his old home State to find somebody to help develop his claim. He immediately faces a "blue-sky" commission, which says he must have an engineer's report on the property, which he is unable to pay for.

A mine represents an enormous investment. The poor prospector can not make such investment, and therefore he quits prospecting. Prospectors in the West to-day are almost a thing of the past largely because of these restrictions upon their ability to get somebody to help them develop their enterprises.

We say that any restrictions upon these men who go out into the mountains and endeavor to search out the hiding places of minerals is against the best interests of the country.

We must get away in this country from making man the controller of our destinies. I say the system is wrong. Let us define the offenses which should be punishable and leave the execution of the law to the courts. We are aiming to prevent fraud, not to stifle development. If I come to you and say I have been prospecting out in Utah and I have four claims; here are my certificates of location; here are the assays which show the value and probability of ore; I want you to take an interest in this prospect, and with your friends help develop a producing mine for the country; if I tell you all the facts, is it not your right to go into that business enterprise with me without restriction? This property may develop a wonderful profit and it may prove worthless. Why, if I tell you all the facts, if I deal with you as man to man, why should there be any interference by the Government?

We need the prospector to find these mines. And we must give him encouragement if he is to go on month after month and year after year in the hope that some day he will strike a mine and become rich. We must

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Landis, *Cont'd*

ing against the Act and propogandizing for amendments were enlisted in the effort to advise the Commission in the wise exercise of its powers, the government and issuers, bankers, lawyers and accountants would be far nearer to a solution of their problems. I cannot urge too strenuously such a course of action. The control of financing inherently bristles with complex situations adaptable far better to particularized administrative action than to the generalities that must of necessity characterize the legislative process. Along this road lies a better understanding between government and finance of their common problems. It presents none of the pitfalls that necessarily attend efforts to open the Act to the attack of selfish and short-sighted interests.—*Extracts, see 2, p. 160.*

Report of House Committee on Interstate and Foreign Commerce

During the post-war decade some 50 billions of new securities were floated in the United States. Fully half or $25,000,000,000 worth of securities floated during this period have been proved to be worthless. These cold figures spell tragedy in the lives of thousands of individuals who invested their life savings, accumulated after years of effort, in these worthless securities. The flotation of such a mass of essentially fraudulent securities was made possible because of the complete abandonment by many underwriters and dealers in securities of those standards of fair, honest, and prudent dealing that should be basic to the encouragement of investment in any enterprise. Alluring promises of easy wealth were freely made with little or no attempt to bring to the investor's attention those facts essential to estimating the worth of any security. High-pressure salesmanship rather than careful counsel was the rule in this most dangerous of enterprises.

Equally significant with these countless individual tragedies is the wastage that this irresponsible selling of securities has caused to industry. Because of the deliberate overstimulation of the appetites of security buyers, underwriters had to manufacture securities to meet the demand that they themselves had created. The result has been that investment bankers with no regard for the efficient functioning of industry forced corporations to accept new capital for expansion purposes in order that new securities might be issued for public consumption. Similarly, real-estate developments would be undertaken, not on the basis of caring for calculated needs but merely as an excuse for the issuance of more securities to satisfy an artificially created market. Such conduct has resulted both in the imposition of unnecessary fixed charges upon industry and in the creation of false and unbalanced values for properties whose earnings cannot conceivably support them. Whatever may be the full catalogue of the forces that brought to pass the present depression, not least among these has been this wanton misdirection of the capital resources of the Nation.

The irresponsibility which fostered this tragic distribution of securities derived in the main from the abnormal profits possible from the business of selling securities. Despite the fact that that business demands the assumption of responsibilities of a character fully equivalent to those of trusteeship, compelling full and fair disclosure not only of the character of the security but of the charges made in connection with its distribution, the literature on the faith of which the public was urged to invest its savings was too often deliberately misleading and illusive. Even dealers through the exertion of high-pressure tactics by underwriters were forced to take allotments of securities of an essentially unsound character and without opportunity to scrutinize their nature. These then would be worked off upon the unsuspecting public. One would have to turn the pages of history back to the days of the South Sea bubble to find an equivalent fantasy of security selling. It is these facts that have led the President, speaking for the Nation, rightly to demand that such a situation can no longer be tolerated.

Because only the dishonest man could object to the principles of the legislation outlined in the President's message to Congress urging the passage of a Securities Control bill, these principles have met with wide approval from the public, investment bankers, dealers, and industry alike. In brief, the aims set forth by the President are:

(1) An insistence that there should be full disclosure of every essentially important element attending the issue of a new security.

(2) A requirement that whatever action taken by the Federal Government for such disclosure should be limited to that purpose and should be so devised as not to be capable of being construed as an approval or guarantee of a security issue.

(3) A demand that the persons, whether they be directors, experts, or underwriters, who sponsor the investment of other people's money should be held up to the high standards of trusteeship.

The achievement of these ends is the principal purpose of this bill.

Resting upon the power of Congress under the Constitution over interstate and foreign commerce the bill closes the channels of such commerce to security issues unless and until a full disclosure of the character of such securities has been made. The items required to be disclosed, set forth in detailed form, are items indispensable to any accurate judgment upon the value of the security. But to require a disclosure of these items by the filing of

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Callbreath, *Cont'd*

develop these enterprises. I have stated that as to Cripple Creek alone, not one of the big mines in that district could have ever been developed, because stock could not have been sold under the "blue sky" laws of the Nation, and yet Cripple Creek has produced practically half a billion dollars of gold, which has gone into the commerce of the world.

The point I want to make is that the restrictions placed upon the sale of stock for the development of these new enterprises—stock which can not be termed a security because it is but an interest in a hazardous enterprise—is dangerous to the future development of this country. What we need to do is simply to provide against and punish fradulent transactions. If I come to you with a proposition, no matter how risky it may be, if you are willing to enter into the risk with me you should be privileged to do it without restriction.

I do not believe that the "blue sky" laws in any of the States is based upon a proper theory, and I do not believe the Federal Government can afford to approve or strengthen those laws. I do not believe the Federal Government can afford to justify these tax-eating agencies I feel sure that the proper theory is to define the act which we want to prevent, and then declare that the Commission of such an act is a crime, and provide for its punishment under the machinery of the Government already set up, without any effort to create a new agency with discretionary powers or extending the powers of agencies already created, which is bound to result badly for the development of this Nation.—*Extracts, see 10 p. 160.*

Nathan Isaacs

Professor of Business Law
Harvard University

In a discussion of the Securities Act and the Constitution the principles called into question have to do in the first place with the fitness of the government machinery for the purpose in hand. Let us look at the control by the government of the mails as a basis for attempting to control the financing of business. Obviously the connection is pretty thin. We already have provisions for punishing those who use the mails to defraud and little or nothing has been added by the Act in this respect, whether on the criminal side or the administrative side with its power to issue fraud orders. But here we are attempting to subject a business, and more than a business, to rules and regulations that go far beyond the prevention of fraud, even to the extent of imposing liabilities not based on tort or on contract, and not capable of being modified by contract, upon everyone connected with the industry if the mails are used even in preliminary negotiations connected with ever so small a part of the enterprise. The principle is loaded with danger. Every government, city or state as well as federal, will be tempted under it to extend its constitutional jurisdiction by making the use of machinery which it controls subject to a stipulation that whoever cares to use this machinery does so subject to rules which that government could not legally impose. We need not conjure up possible but improbable extensions of this doctrine. We have already gone pretty far in attempting to extend the state's jurisdiction for calling into court by substituted service all those who use our highways. Obviously the draftsmen of the Act realized that the mail basis for the constitutionality of their Act was flimsy, for they provided specifically that the prohibition against using the mail for unregistered securities should not apply to securities originated and sold entirely within a state. Paradoxically enough, at this point the old school of verbalists might probably have been more liberal than the new, for they have their lottery cases which embrace intrastate as well as interstate mailing within their prohibition.

Is interstate commerce an essential or only a fortuitous element in the sale of securities? If we are to rise to the heights of applying principles, it is not enough to seize on a technical transportation phase of a business and, closing our eyes to everything else, declare the whole matter interstate commerce. We are familiar with the phenomenon of activities within a state which are none the less incidental to interstate commerce and therefore are removed from state to federal control. But the converse is also true; there are activities as to which the crossing of state lines is incidental and which remain intrastate matters. It must be remembered that the state is just as clearly supreme in its power over these matters as is the federal government in its power over the others. The answer to the question whether the "use of any means or instruments of transportation or communication is interstate commerce," is in the security business a mere excuse or a substantial reason for federal regulation, calls for a study of the facts of the business. What is carried? The Act speaks of making use of interstate commerce "to sell or offer to buy such security through the use or medium of any prospectus or otherwise." Presumably this clause embraces letters and telegrams and possibly telephone and wireless messages. It further speaks of the carrying of "any such security for the purpose of sale or for delivery after sale," or the carrying of a prospectus. "Security" in the Act is defined—none too clearly—as the pieces of paper that are tokens of certain choses in action rather than as the choses in action themselves. This tendency to look on the paper as the thing is in accord with modern convenience, if not necessity. Rights represented by paper are looked upon as having for taxation and administration purposes, a physical situs wherever the paper is found. They have long been considered things of value in the law of larceny. The tendency to make securities negotiable has overcome the logic of the old law that made the certificate of stock subordinate in all respects to the official records on the books of the company. Had this novel attitude towards paper tokens existed in the days of Paul v. Virginia, insurance policies might have been a subject of interstate commerce. The securities as things carried, then, may be looked upon as substantial. Still, can the carrying of them across state lines for sale in intrastate commerce or for delivery after sale in intrastate commerce be seized upon to subject the terms and conditions of the manufacture and sale of the

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a registration statement with the Federal Trade Commission would be insufficient, if by the mere act of such filing a privilege immediately to sell these securities was granted. High-pressure salesmanship with all its demonstrated evil effects would not even be scotched. Instead, heightened pressure would be exerted to effect the distribution of an issue before the investing public could digest the information demanded. For this reason and because some check should be exercised as to whether or not the disclosures demanded have been made, a period of 30 days intervenes between the act of disclosure by the filing of the registration statement and the date upon which that statement becomes effective so as to permit the sales of the securities registered under it. The type of information required to be disclosed is of a character comparable to that demanded by competent bankers from their borrowers, and has been worked out in the light of these and other requirements. They are, in the judgment of your committee, adequate to bring into the full glare of publicity those elements of real and unreal values which may lie behind a security. To require anything else would permit evasions; but to require these disclosures fulfills the President's demand that "there is an obligation upon us to insist * * * that no essentially important element attending the issue shall be concealed from the buying public."

The mechanism devised by your committee for compelling disclosures and for insisting that disclosures shall be both adequate and true has been carefully framed, so that neither action nor nonaction by the Federal Trade Commission can be interpreted as a guarantee or approval of any particular security issued. The right to sell a security follows automatically upon the termination of the stipulated period after the filing of the registration statement. Nonaction by the Commission has no effect to disturb the acquisition of this right to sell the security in interstate commerce. Such functions as are given the Commission, with reference to the initial filing of the registration statement, are limited merely to determining whether the information so filed is complete and accurate on its face. The Commission may inquire to see whether the questions that should have been answered have been answered. But with the truth or falsity of the answers the Commission has no initial concern. If the statement is incomplete and inaccurate on its face, the Commission may require that these gaps shall be filled in before the statement is to become effective.

If, in an unusual case, the Commission is of the opinion that the statements made are materially untrue or materially inadequate, the Commission may institute an investigation and after giving an opportunity for a hearing, if convinced that the statements are untrue or inadequate, issue a stop order that will prevent further distribution of the security. The power so to suspend the right of underwriters and dealers to continue selling the security to the public, after proof that the statements upon the face of which the security is sold are false, is essential for the protection of the investing public.

Thus the grant of control to the Federal Trade Commission conveys with it no right to pass upon the merits of any security, but simply to insist that whatever its merits, facts essential to its character are to be disclosed. An additional safeguard against the construction that the Government in any way approves a security registered with the Commission, is the provision of the bill expressly prohibiting any statement that registration of a security with the Commission is evidence either that the requirements of the act have been met or that the Commission has in any way approved the security.

The essential characteristic of civil liabilities imposed by this bill consists of a requirement that all those responsible for statements upon the face of which the public is solicited to invest its money shall be held to standards like those imposed by law upon a fiduciary. Honesty, care, and competence are the demands of trusteeship. These demands are made by the bill on the directors of the issues, its experts, and the underwriters who sponsor the issue. If it be said that the imposition of such responsibilities upon these persons will be to alter corporate organization and corporate practice in this country, such a result is only what your committee expects. The picture of persons, assumed to be responsible for the direction of industrial enterprises, occupying 50 or more directorships of corporations is the best proof that some change is demanded. Directors should assume the responsibility of directing and if their manifold activities make real directing impossible, they should be held responsible to the unsuspecting public for their neglect. But to require them to guarantee the absolute accuracy of every statement that they are called upon to make, would be to gain nothing in the way of an effective remedy and to fall afoul of the President's injunction that the protection of the public should be achieved with the least possible interference to honest business. Whereas to insist upon the assumption of duties of trusteeship is to return to the ancient truths of fair dealing. The demands of this bill call for the assumption of no impossible burden, nor do they involve any leap into the dark. Similar requirements have for years attended the business of issuing securities in other industrialized nations. They have already been readily assumed in this country by honest and conservative issuers and investment bankers. Instead of impeding honest business, the imposition of liabilities of this character carries over into the general field of security selling, ethical standards of honesty and fair dealing common to every fiduciary undertaking.—*Extracts, see 4, p. 160.*

Hon. C. A. Wolverton,

U. S. Representative, N. J., Republican

THE theory that underlies the Federal Securities Act is different in its scope from that which forms the basis of many of the so-called "blue sky" laws enacted by the States. The latter quite frequently embody the thought that there is a duty upon the State in the fulfillment of its obligation to protect its citizens from fraudulent practices, to determine the quality of the security to be offered before granting a permit for the sale thereof. This is well illustrated in the act of one of the States which contains this provision:

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security to the Interstate Commerce Clause? Something of the sort has been unsuccessfully attempted with prison goods. The analogy obviously before the eyes of the draftsmen of this Act was based on another constitutional clause, the Eighteenth Amendment, and not on the Interstate Commerce Clause. The truth is that securities are made and ordinarily sold, whether on exchange or in brokerage houses, outside of the channels of interstate commerce. Negotiations and transportation occur across-state lines, but it is putting the cart before the horse to say that the interstate part is essential and the sate part incidental.

The draftsmen of the Act must have been conscious of this difficulty; otherwise they would have asked Congress to exercise a plenary exclusive power over this newly discovered division of interstate commerce. Yet they said that "Nothing in this title shall affect the jurisdiction of the securities commission—of any State or Territory of the United States—over any security or any person." Is this an attempt on the part of Congress to delegate to the states a part of the plenary and exclusive power which it claims? Can Congress do that? Or has it attempted to make federal officers out of state officers by enacting all existing state laws as supplementary federal laws in the several jurisdictions? One shudders at the constitutional complexities. Quite clearly the inadequacy of Congressional control over securities was recognized as a fact, and at the risk of a constitutional impasse the state supervision had to be preserved. But the reality faced here is precisely the type of reality that helps to answer the question, Are we dealing with what is an interstate matter—that is, substantially, and not merely technically with the aid of such word-stretching as the new School repudiates?

What was the open object of withdrawing the control of interstate commerce from the states? Was it not to permit a free flow of commerce across state borders? We have to have none of the petty tariffs, the discriminations against goods from other states, the stoppage at frontiers, that made the commercial map of eighteenth century Europe into a crazy quilt. The free flow of commerce throughout the length and breadth of the land was to be assured by taking away the power of regulating such commerce from the states and confiding it to a central government. When this power is made the basis of an act which makes a curious caution necessary in crossing state borders and thus tends to confine financial operations within the borders of single states, we are confronted with a paradox of a type not infrequent in legal history. The power vested in Congress in the hope of making business free to cross state borders is utilized so as to erect barriers against it whenever it meets a state line. If the new jurisprudence looks to the spirit of the Constitution, it must hesitate long before relying on the Interstate Commerce Clause for the Securities Act of 1933.

There is one other attack open for those who feel that the time has come for emancipation from the words of the Constitution. They raise the question whether the concentration of certain transactions in a few cities for reasons of convenience—a natural consequence that flows from improved systems of communication and transportation—does not call for an entirely new definition of "interstate" and intrastate." The purely physical accident of where certain words are uttered or where a particular office is situated is comparatively unimportant as contrasted with questions of the domicile of the parties, the place or places of contemplated performance, the sources from which funds or goods are drawn and the channels into which they are sent. In other words, without relying on the technical test of the physical transportation of something or other over a state line, we ought to contemplate a transaction in its complete setting. In that sense, the New York Stock Exchange, for example, might be looked upon as a national institution and be governed as such by national law. Perhaps something of the sort is inarticulately behind the arguments of those who for some years have been advocating federal legislation to control stock market transactions. There is more reality to this suggestion than to most of the more technically presentable defenses of some of the new legislation. It is difficult to work out. No definition of interstate commerce has yet been suggested to take care of such national institutions, and perhaps none can with the handicap of a century and a half of judicial definition that looks on physical line-crossing as the only reality upon which interstate commerce can be predicated. It may well be that here we reach the limit of the possibilities of the second stage of constitutional interpretation and that if there is to be undertaken a new sorting out of matters of national import for national control it must be done by constitutional amendment.

We have canvassed the suggestion of the newer Schools of constitutional interpretation to find that unless they stop at the purely negative point of avoiding verbalism so as to declare all things possible for those who have faith in their creed, they must develop a body of principles which may lead to greater restrictions than those that they have removed. In the case of the Securities Act it may be that the die-hards of the old School will fail to find the necessary words of negation in traditional constitutional law, while reluctantly granting the elasticity of the enabling clauses that have been relied upon. On the other hand, in spite of the general tendency of the realists, or whatever they call themselves, to align themselves with the new legislation, it may well be that their own principles stop them short of their goal. The idea of transferring this branch of police law from the states to the federal government strains traditions and principles more than it does words.—*Extracts, see 11, p. 160.*

The Washington Post Editorial

Representative Rayburn's assertion that it is not the securities act, but the lack of a market, which prevents the sale of securities, is contradicted decisively by the evidence of those whose business it is to supply the market with new issues, and by spokesmen for institutions which provide an investment demand for such offerings.

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Wolverton *Cont'd*

"If the commissioner of corporations finds that the proposed plan of business of the investment company is unfair, unjust, or inequitable, or that it does not intend to do a fair and honest business, he shall refuse to issue the certificate."

And in another act of the same State it is further provided: "If he (commissioner) finds * * * that the securities that it proposes to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof the commissioner shall issue to the applicant a permit authorizing it to issue and dispose of securities, as herein provided, in this State, in such amounts and for such considerations and upon such terms and conditions as the commissioner may in said permit provide. Otherwise he shall deny the application and refuse such permit—."

Though there is a wide difference between the principle of merely requiring the filing of full and true information concerning the proposed security as provided for in the bill and the principle of assuming an obligation to pass upon the "honest" intent of the issuer and determine whether it "will work a fraud upon the purchaser" and actually fix the "terms and conditions" including the "amounts" and "considerations," yet it cannot be denied that the information required to be filed by schedules A and B of this bill will give all the information that is necessary for any prudent person to have in passing upon the desirability of the investment security. By requiring the purchaser to be judge of his own investment, based upon facts made available to him, the Government is thereby relieved of a responsibility that some would not be willing to acknowledge as a proper function of government.

Every possible precaution to obtain the full truth has been provided by the terms of the bill. Power is given to the commission to withhold the right to deal in any proposed security until every requirement has been complied with. And, to insure care and remove possibility of untrue or extravagant statements of fact, civil as well as criminal, responsibility is fixed upon the issuer, every officer, director, or agent who permits his name to be used in connection therewith.

While it denies to no one the right to offer any security to the public, after the facts required by the statute have been disclosed, yet it attaches personal responsibility respecting the truthfulness of the facts submitted, and provides a right of recovery in money damages for anyone aggrieved by any misstatement of material fact.

The merit of this bill lies in the fact that it provides a means of protection to the investing public without the Government's assuming the stupendous task of passing upon the value, quality, or desirability of the multitude of various types and kinds of securities that are subjects of interstate and foreign commerce.

The plan or policy of the bill is sound. It will prove highly beneficial to any investor who is intelligent and prudent enough to utilize the information made available by its provisions.—*Extracts, see 8, p. 160.*

Rayburn

U. S. Representative, Tex. Democrat

In the 20 years that I have been a Member of Congress I have dealt with matters touching interstate commerce. When you deal with matters affecting interstate commerce in transportation you do so with a law that has been upon the statute books for more than 40 years. You have the decisions of the courts as your chart, and you have the decisions of the Interstate Commerce Commission and the various State commissions. With the Federal Securities bill we are embarking upon a practically new and untried sea; and, as I say, since I have been a Member of Congress, this is the most technical matter with which I have ever been called upon to deal.

The first permanent settlement of English-speaking people in Virginia was accomplished through a joint-stock company. The successors of these early Colonies, through a series of amazing adventures, have wrested a continent from the aborigines, have explored and utilized its natural resources until more than a hundred million people comprise the citizenship of this Republic. The initiative, self-reliance inventive genius, organizing ability, and industry of the people who have occupied this continent have created a national wealth of some $300,000,000,000.

The production and distribution of goods by the Americans have given rise to new institutions and to many refinements and new uses of old methods. The corporation has reached a development and has been put to uses never dreamed of by the adventurers who united their slender capital in a joint-stock company to found a colony in the wilderness of Virginia. The conquest of this continent was made by individual human beings, each pursuing his own happiness in his own way. There was impatience with restraint. Rugged individualism characterized the pioneer. Thomas Jefferson and Andrew Jackson, the idols of frontiersmen, were trusted and followed as they taught that the best government is the least government. Those were the days of self-reliant agricultural people. During the past 75 years this country has experienced an industrial revolution. Through corporations, great aggregations of capital have been assembled to build railroads, develop mines, fell forests, fabricate goods, and finally to carry on the ordinary processes of merchandising.

The early corporations were in each case composed of a few stockholders who contributed to a joint fund. These stockholders never traded in their own stock. The corporations usually were closed. If the ventures were successful, the profits were divided between those who contributed the capital; if unsuccessful, the contributors of the capital lost what they had risked—that is, the amount they had paid into the capital stock. As corporations became older, as their founders died, as their operations became more extensive, as they came to demand increasing and frequent additions of capital, their stockholders ceased to be a few fellow adventurers known to each other and became a multitude. The relations between the stockholder and the corporation ceased to be personal and became impersonal.

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Washington Post, *Cont'd*

Representatives of insurance companies state that they have funds available for investment. Investment bankers corroborate their assertions by saying that they are constantly receiving requests from corporations, banks, and individuals who are seeking outlets for saved funds. Bankers and potential investors unite in affirming that with increasing business activity, many corporations would like to make plans for future expansion.

Since bankers are ready to offer new issues to the public, since investors are in possession of funds with which to buy them, and since business is in need of new capital, the stage appears to be set for a speedy revival of the investment market, as soon as the uncertainties and excessive restrictions created by the securities act are removed. Expert testimony is unanimous to the effect that ill-conceived legislation is now artificially holding back and strangling forces of recovery which are eager to play their beneficial part.

In the meantime, however, even the financing of reorganization plans has been seriously retarded by the securities act. The chairman of the bondholders' committee for bonds of the State of Arkansas, for example, says that it has been impossible to proceed with a refunding plan voted by the State Legislature, because of the unreasonable liabilities that the securities act would impose upon the committee. If there is any justification for legislation which thus actively prevents the process of convalescence, its nature is still to be made clear.

It is not merely the evidence furnished by the informed individuals which constitutes a powerful indictment of the existing law. Equally impressive are the high prices ruling for sound securities and the activity for new issues not subject to the restrictive provisions of the securities act.

Day by day a sharper cleavage is drawn between those who cling to a so-called reform resulting in the atrophy of business enterprise, and those who desire a reasonable type of regulation that would assist business expansion. The Administration certainly cannot want to see business recovery halted midway by the exigent demands of an unreasonable law. But unless that outcome is desired it cannot afford longer to ignore the evidence of those bankers, financiers and business men who join unanimously in urging such revision of the securities act as will make it workable.—*Extracts, see 9, p. 160.*

William V. Hodges

Attorney, Denver, Colo.

To one who believes that the evils at which the Federal Securities Act is aimed are not corrected by legislation of that type, the suggestion that efforts be made to amend it does not seem adequate.

The proposal to amend presupposes that there is somewhat of good in it which can be saved. Since it is my view that nothing that can be done to it can make of it a beneficent law, I register the opinion to that effect.

At times it seems that business men are not vitally interested in Constitutional questions unless some issue arises in their own affairs in which they can see an immediate opportunity to use the Constitutional shield as a protection to them against some concrete injustice.

The power to regulate the issuance and sale of securities by the Federal Government cannot be sustained except by a devious process of Constitutional construction which business men ought not to approve unless they desire to cooperate in forging weapons for the destruction of fundamental rights upon which all *honest* business is predicated.

Even if the Federal Government seizes legislative authority in the premises through a process of reasoning which makes such security issues, subject to the "regulatory power" of Congress, the legitimate limits to "regulatory power" end long before we reach the field where rights are created between buyers and sellers.

The real causes of losses to investors have been due to mistakes by purchasers in estimating the value of their purchases, mistakes which would have been obviated only in very few cases, by a complete knowledge of all the facts pertaining to the object of the purchase at the time of purchase.

We have had good and bad administrators of the various state Blue Sky laws. Experience with the bad is of no use to us in a comparison. But I venture the suggestion that, in the general investment debacle, investors in issues that had been carefully scrutinized by as intelligent and faithful administrators as can be secured for the administration of the Securities Act, who were dealing with Blue Sky laws requiring the fullest disclosure of all material facts, fared no better than the general run of investors.

Following the war farmers in the corn belt found buyers for their farms at fabulous prices; both sellers and purchasers knew farms and farming. The deflation of these properties inaugurated the era of agricultural distress. I suggest that, in the aggregate, these transactions did more harm to the country than the distribution of Insull securities, or of foreign bonds, and other conspicuous examples of the distribution of securities at values not possible of realization.

If there is folly in the purchase of such things, it cannot be cured by any information as to the extent and nature of the assets behind the purchase at any given time. The fullest information cannot be harmful, but its deterrent effect on the unwise investors is nothing compared to the paralyzing effect of the Act on honest business.

In my opinion the Act should be repealed on the theory that it is in all respects a harmful and useless piece of legislation.—*Extracts, see 5, p. 160.*

Rayburn, *Cont'd*

The thousands of stockholders of a great corporation have come to trust implicitly the board of directors. The directorates have come to be composed of men who sit on many such boards. In our investigation of the stock ownership and control of railroads, we found that the chairman of the board of one railroad was a director of some 70 other corporations. In such a situation—and this is rather typical—the board of directors have to rely on the officials of the corporation. Where the stock is widely distributed, as is the case of so many American corporations, the officials of a company, through the use of proxies and of the advantage they have in obtaining proxies, are able to continue in office without much regard to their efficiency. The proof is that when a corporation goes into receivership some official of the corporation is usually appointed receiver. Two hundred companies own 25 per cent of the total wealth of the United States. We have in this country more than 300,000 corporations. The total assets of all non-banking corporations in 1930 have been estimated at $165,000,000,000 (American Economic Review, March, 1931, pp. 15 and 16). The combined assets of the 200 largest of these corporations amounted in 1930 to $81,000,000,000. That is, 200 big corporations control half of the wealth of all the non-banking companies. Two hundred companies have as much assets as the more than 300,000 smaller companies. When we look to the New York Stock Exchange, we find that 130 of the largest companies control more than four-fifths of all the assets of all the companies represented by securities listed by the exchange.

In 1800 the corporation was used in this country mainly for undertakings of public interest, such as the construction of turnpikes, bridges, and canals, and the operation of banks and insurance companies. Up to 1800, 355 profit-seeking corporations had been formed in the United States. Today we have a thousand corporations for one that existed in 1800. The operation of half of our industry is now in the hands of 200 companies. This concentration has brought a change in the character of competition, and production is carried on under the ultimate control of a very few individuals. What is of great concern is that the value of tangible goods is becoming increasingly dependent upon these corporate organizations.

With the concentration of the ownership of our national wealth in corporations there has also developed a dispersion of stock ownership. Of 144 companies out of the 200 largest corporations in this country, 20 each had less than 5,000 stockholders, 71 companies each had over 20,000 stockholders, and more than one-half of the assets belonging to the 200 largest corporations were held by companies each with 50,000 stockholders or more. The 144 largest companies whose stock lists have been examined reported 5,800,000 stockholders of record. According to an investigation made by the Committee on Interstate and Foreign Commerce, it was found that the largest stockholding of the Santa Fe Railroad was only three-fourths of 1 per cent of the total and there were over 59,000 stockholders. The largest holding of the Southern Pacific Co. was 1.65 per cent of the total and there were over 65,000 stockholders. The largest holding of the Southern Railway Co. was 1.9 per cent of the total and there were over 20,000 stockholders. The largest holding of the Baltimore and Ohio was 2½ per cent of the total and there were nearly 40,000 stockholders. In 1931 the Pennsylvania Railroad reported more than 240,000 shareholders of record; the United States Steel Corporation, 174,500; the American Telephone and Telegraph, 642,000.

It is estimated that in 1928 there were 18,000,000 stockholders of corporations in the United States. This is an increase of about 50 per cent over 1920. Much of this increase in numbers has been due, in a very large measure, to the sale of securities to customers and to employees of corporations.

When we consider the welfare of our people the enacting of the Federal Securities bill into law seemed imperative. Any casual consideration of the development of this country impresses on one that the size of our industrial unit is increasing, and with its growth there has come a dispersion in the ownership of the unit. Today an important part of the wealth of individual citizens consists of interests in great enterprises of which no single person owns a major portion. Today the owner does not possess actual physical properties, but he holds a piece of paper which represents certain rights and expectations. But the owners of these pieces of paper have little control over the physical property; the owner of these pieces of paper carry no actual responsibility with respect to the enterprise or its physical property.

Again the value of the wealth of a particular person is coming more and more to depend on forces beyond his own reach and control. The wealth of the individual is represented by securities subject to the great swings in the appraisal by society of its own immediate future. Wealth in this form can be directly enjoyed by its owner in a less and less degree. Only through sale in the market can the owner obtain direct use of his wealth. In other words, the owner of securities is chained to the market. The purpose of this bill is to place the owners of securities on a parity, so far as is possible, with the management of the corporations, and to place the buyer on the same plane, so far as available information is concerned, with the seller. Many of us live in small communities where most of the wealth consists of real estate and improvements. In such a situation, the corporation is of importance only as we purchase and consume the products and services of corporate endeavor. Those who live in large industrial centers, the so-called "metropolitan areas" in which we have permitted an amazing concentration of activity, are familiar with the fact that today the owner of shares in a corporation possesses a mere symbol of ownership, while the power, the responsibility, and the substance which have characterized ownership in the past have been transferred to a separate group which holds control. It is for the protection of these 18 million owners of symbols that this bill was drawn.—*Extracts, see 8, p. 160.*

The 73d Congress « « Now in Session

Duration—March 4, 1933-March 4, 1935. First Session Convened March 9, 1933; Adjourned June 16, 1933. Second Session Convened January 3, 1934.

In the Senate

Membership
Total—96

60 Democrats — 35 Republicans

1 Farmer-Labor

Presiding Officer
President: John N. Garner. D.
Vice-President of the United States

Floor Leaders

Majority Leader
Joseph T. Robinson, Ark., D.

Minority Leader
Charles L. McNary, Ore., R.

Officers

President Pro Tempore
Key Pittman, Nev., D.

Secretary
Edwin A. Halsey

Sergeant at Arms
Chesley W. Jurney

Chaplain
Dr. ZeBarney Thorne Phillips, D. D.

In the House

Membership
Total—435

313 Democrats — 115 Republicans

5 Farmer-Labors
2 Vacancies

Presiding Officer
Speaker: Henry T. Rainey, D.
Member of the House from Illinois

Floor Leaders

Majority Leader
Joseph W. Byrns, Tenn., D.

Minority Leader
Bertrand H. Snell, N. Y., R.

Officers

Clerk of the House
South Trimble, Ky.

Sergeant at Arms
Kenneth Romney

Doorkeeper
Joseph J. Sinnott

Chaplain
Rev. James Shera Montgomery, D. D.

Progress Made by Major Legislation

From March 29 to April 28, 1934

Soon after President Roosevelt's return from his Florida vacation it became apparent to him his original hope that Congress might finish its work and adjourn by the middle of May was a hope that had to be abandoned.

At that time it was practically decided that three measures must be put through both houses before the members could start home to look over their political fences against the expected attacks of opposition candidates in the primaries of the spring and summer and in the elections of the autumn.

Those three measures are:

The tax bill, to provide revenues for the operation of the Government during the fiscal year beginning July 1, 1934; the tariff bill, so amending the present tariff laws as to give the President power to negotiate reciprocal trade agreements with individual nations; and the Stock Exchange control bill.

There are other measures the President and his advisers would like to see go through before adjournment, but the President is too expert a politician not to know that to put too much pressure on Congress at this time would be dangerous.

Furthermore, the President, because he does understand politics, wants to do as much as he can, at this particular time, to aid in the reelection to the House and Senate of those members of these bodies who have been standing with him since his inauguration.

It is no time to rock the boat, and the President and his supporters on Capitol Hill are doing their best to be nice to each other. For this reason the Administration will be well satisfied if the three bills mentioned above come through safely.

As it is, the President will have to agree to compromises here and there, but apparently he is ready to do this rather than run the chance of having one or more of these bills completely mangled.

At the end of April the program was in an unsettled state with the general opinion in Washington being that Congress would not adjourn before June 15 at the earliest and with nobody willing to venture a prediction as to how much of the Presidential program would go through unscathed.

Air Mail

An announcement by President Roosevelt that he desired that, before further legislation on air mail was passed, a fact-finding commission should be authorized by Congress to make a study of the situation, served to check action in both houses of Congress on this problem.

Legislation to carry out the President's wishes is being prepared but had not been reported to either house on April 27.

Appropriations

Seven of the ten regular appropriation bills have been passed by both houses of Congress and have become law, six by Presidential signature, and one by passage over a Presidential veto.

Those which have become laws are:

Independent offices (vetoed and passed over veto); Interior; Navy; Treasury and Post Office; State; Justice, Commerce and Labor; Agriculture; War.

War, Legislative; and District of Columbia will have been passed by the time this number of the DIGEST appears.

The final bill, the deficiency bill, will be drawn and put through in the closing days of Congress to take care of oversights in the others.

Cotton

The Bankhead cotton control bill, an amendment to the Agricultural Adjustment Act (AAA) of 1933, placing a heavy penalty on cotton growers who raise more than their quota, as prescribed in the Act, passed both houses of Congress and was agreed upon in conference on April 17. The President signed the bill on April 21.

Power Rates

On April 14 the President signed the Senate Joint Resolution directing the Federal Power Commission to investigate rates charged for electricity to residential, rural, commercial and industrial consumers by private and municipal corporations.

In a report on this resolution the Senate Committee on Interstate Commerce stated:

"There is at the present time no adequate and comprehensive information as to electrical rates and the Congress and other governmental agencies have a great need for this information in measuring the charges made in various sections of the country for both public and private power companies.

"The Federal Power Commission is the best agency to conduct this investigation. It is at present engaged in a survey of the available sources of electrical power throughout the country. This study would be closely related to that.

"It is provided that the expenditures may be authorized out of the funds appropriated for expenditure subject to the discretion of the President, and accordingly no special appropriation is made."

Silver

On March 19 the House passed the Silver bill (HR 7581) introduced by Representative Dies, Tex., D. This bill authorizes the appointment of a board composed of the President, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Agriculture to negotiate with foreign buyers with the view of selling American agricultural surplus products at the world market price and to accept in payment therefor silver coin or bullion at such value as may be agreed upon which shall not exceed 25 per cent above the world market price of silver, and to authorize the Secretary of the Treasury to issue silver certificates based upon the agreed value of such silver bullion or coin in payment for the products sold, and for other purposes.

After his return from Florida the President indicated to House and Senate Democratic leaders that he was opposed to any silver legislation. The "silver bloc" in the Senate is, however, still active but with the chances for legislation at this session greatly reduced because of the President's attitude.

Stock Exchange

ON April 20 the Senate Committee on Banking and Currency reported the Stock Exchange Control bill (S. 3420) officially entitled "The Federal Securities Exchange Act." The necessity for this legislation and the major provisions of the bill are described in the following extracts from the Committee report:

"If our present progress toward prosperity is not to be impeded from time to time by the financial collapse invariably following artificial inflation of security prices, it is essential that the Federal Government adopt measures which will enable it to stem the speculative tide whenever necessary.

"The contention of Stock Exchange authorities that internal regulation obviates the need for governmental control seems unsound for several reasons.

"In the first place, however zealously Exchange authorities may supervise the business conduct of their members, the interests with which they are connected frequently conflict with the public interest.

"Secondly, the securities exchanges have broadened the scope of their activities to the point where they are no longer isolated institutions, but have become such an important element in the credit structure of the country that regulation, to be effective, must be integrated with the protection of our entire financial system and the national economy.

"Thirdly, the control exercised by Stock Exchange authorities is admittedly limited to their own members and they are unable to cope with those practices of nonmembers which they deplore but cannot prevent.

"Fourthly, the attitude of Exchange authorities toward the nature and scope of the regulation required appears to be sharply at variance with the modern conception of the extent to which the public welfare must be guarded in financial matters. Their adherence to the view that manipulation, pool activities and the creation of illusory 'price mirages' are proper and legitimate, except where certain technical violations of their rules are involved, is inconsistent with the type of regulation the public interest demands.

"From the outset the committee has proceeded on the theory that so delicate a mechanism as the modern stock exchange cannot be regulated efficiently under a rigid statutory program. Unless considerable latitude is allowed for the exercise of administrative discretion, it is impossible to avoid, on the one hand, unworkable 'strait-jacket'

regulation and, on the other, loopholes which may be penetrated by slight variations in the method of doing business.

"Accordingly, it is essential to entrust the administration of the act to an agency vested with power to eliminate undue hardship and to prevent and punish evasion. Of course, well-defined limits must be indicated within which the authority of such administrative authority may be exercised.

"The committee considers that the act could be administered effectively by a commission of five, to be appointed by the President with the advice and consent of the Senate specifically for that purpose.

"The bill forbids the use of the mails or instrumentalities of interstate commerce to any securities exchange which is not registered with the commission as a 'national securities exchange.' The commission, however, is empowered to exempt from registration small exchanges where the volume of transactions is not sufficient to invite the abuses prevalent on the larger markets.

"When applying for registration, exchanges must agree to comply with the act and with the rules and regulations of the commission and to require observance of the same by their members.

"In addition to the organized security markets, there exist in financial centres unorganized 'over-the-counter' markets where securities are bought and sold in large volume. Many of these securities are of a conservative character, such as government, State and municipal bonds, which are exempted from the provisions of the bill, but others are more speculative in nature and are subject to the abuses of manipulation.

"For example, the committee has heard evidence of extensive manipulation in certain New York bank stocks after their withdrawal from the New York Stock Exchange and while they were being sold 'over-the-counter.' These manipulations resulted in tremendous losses to the investing public, and in enormous profits to insiders. It has been deemed advisable to authorize the commission to subject such activities to regulation similar to that prescribed for transactions on organized Exchanges.

"Margin transactions involve speculation in securities with borrowed money. The ordinary procedure is for a broker to extend credit to his customer in order to finance the purchase of a security, the broker in turn borrowing from a banking institution or another broker. The ease and celerity with which such a transaction is arranged, and the absence of any security by the broker of the personal credit of the borrower, encourage the purchase of securities by persons with insufficient resources to protect their accounts in the event of a decline in the value of the securities purchased. Many thoughtful persons have taken the view that the only way to correct the evils attendant upon stock market speculation is to abolish margin trading altogether.

"A Federal judge furnished this committee with instances from his long experience on the bench, indicating that a large proportion of business failures, embezzlements and even suicides in recent years were directly attributable to losses incurred in speculative transactions.

"The committee has deemed it unwise at this juncture to adopt a measure calculated to abolish margin trading because of the deflationary consequences which might follow. Nethertheless, it feels that the time has arrived to remove the control of credit in margin transactions from the hands of those who, by reason of their self-interest, are least qualified to administer such control—the Stock Exchanges and their members.

"After due consideration, the committee does not recommend that statutory limitations be placed upon the extension or maintenance of credit. The bill authorizes the commission to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchasing, selling, carrying or trading in securities. Such rules and regulations need not be uniform throughout the United States, and hence local conditions requiring special treatment may be taken into consideration.

"To prevent sudden liquidation of existing margin accounts subsequent to the passage of the bill, it is provided that the rules and regulations prescribed by the commission shall not be effective before June 30, 1936, as to any loan made prior to the enactment of the bill, or any renewal thereof.

"The foregoing provisions would be ineffectual to curb speculation unless they were supplemented by restrictions upon the power of others than brokers and dealers to extend credit, since loans to customers directly from banks and others could be arranged to evade margin requirements. The bill imposes manifold checks upon the employment of credit for speculative purposes; (1) it empowers the commission to limit the amount of credit which a broker or dealer may extend upon a security; (2) it prohibits brokers and dealers from borrowing except through a member bank of the Federal Reserve System or in accordance with regulations of the commission; (3) it empowers the commission to limit the amount which brokers may borrow; (4) it authorizes the Federal Reserve Board to limit the amount which member banks may loan on securities, and (5) it empowers the commission to regulate loans to brokers and dealers by corporations having securities listed on Exchanges.

"Several devices are employed for the purpose of artificially raising or depressing security prices. Those which appear to serve no legitimate function are specifically prohibited. Among such practices are fictitious or 'wash' sales; 'matched' orders, or orders for the purchase and sale of the same security emanating from a common source for the purpose of recording operations on the tape and thereby creating a false appearance of activity; and other transactions specifically designed to manipulate the price of a security.

"The impropriety of practices such as 'pegging' or fixing or stabilizing the price of a security has received most careful consideration by the committee. The committee recommends that such practices be not abolished by statute but subjected to regulation by the commission.

"In like manner, the subject of options has been left with the commission for regulation.

"Short selling has been defended as a necessary check upon a rising market and as a stabilizing factor in the ensuing decline, and attacked on the ground that it tends to unsettle the market, depress prices and accelerate declines. The commission recommends that the practice of short selling be placed under the supervision of the commission.

"The information required to be filed under the Securities Act of 1933 relates only to the situation at the time a security is issued. Reports under this bill will provide adequate information reasonably up-to-date as long as the security is traded in on an exchange.

"This aspect of the proposed legislation has been the target of an extensive campaign in the form of letters

and telegrams addressed to members of Congress and especially to members of this committee. The extent of the protest makes it worthy of serious consideration, but it appears that this opposition is largely based on a misunderstanding of the bill, the fear of exposure on the part of some corporations which have heretofore managed to withhold from investors their true financial condition, or the efforts of stockholders hostile to other portions of the bill, who are endeavoring to marshal all possible aid in defeating the bill by inciting their customers to protest.

"The principal objection directed against the provisions for corporate reporting is that they constitute a veiled attempt to invest a governmental commission with the power to interfere in the management of corporations. The committee has no such intention, and feels that the bill furnishes no justification for such an interpretation. To make this point abundantly clear, Section 13 (d) specifically provides that nothing in the act shall be construed to authorize interference with the management of corporate affairs.

"Severe financial losses have been sustained by investors from time to time in cases where a broker pledged his customers' securities for loans in excess of the aggregate indebtedness due him in respect of such securities, or pledged them along with his own securities to finance his private speculative commitments. These practices, as well as the loaning of a customer's security without written authority, are prohibited by the proposed bill.

"Many critics of the stockbrokerage business as now conducted assert that a fundamental evil is the commingling of the functions of broker and dealer by the same person or firm. The contention has been advanced, and evidence before the committee has tended to prove, that a broker who deals in securities for his own account finds it difficult to give disinterested advice to a customer with regard to the securities the customer seeks to buy. However honest the broker's intention may be, it is argued that he should be placed beyond temptation by a complete segregation of the broker and dealer functions. The committee has reached the conclusion that for the present any such action would be unwise. Accordingly, the bill directs the commission to study the feasibility of the complete segregation of the functions of dealer and broker and to report its recommendations to the Congress prior to Jan. 3, 1935.

"Abuse of the dual function of principal and agent has been shown to be especially flagrant in the case of specialists. The bill leaves the regulation of specialists to the commission, but directs that dealings by a broker specialist for his own account shall be reasonably limited. The bill also authorizes the commission to regulate floor trading, a practice which enables speculators on the scene of activities to indulge in many manipulative devices and to demoralize the market in times of excessive trading."

Tariff

On March 29 the House passed HR 8687 to so amend the existing tariff laws as to authorize the President to enter into reciprocal tariff agreements with foreign nations. On April 27 the bill was before the Senate Committee on Finance, with Democratic Senate leaders scheduled to hold a conference on April 30 to work out plans for its consideration by the Senate.

That there will be a bitter contest is certain. Administrative leaders express confidence that the bill will finally be passed but its opponents emphatically disagree on this point.

In a special message to Congress on March 2 President Roosevelt gave the following reasons for asking for the passage of the bill:

"I am requesting the Congress to authorize the Executive to enter into executive commercial agreements with foreign nations; and in pursuance thereof within carefully guarded limits to modify existing duties and import restrictions in such a way as will benefit American agriculture an dindustry.

"This action seems opportune and necessary at this time for several reasons.

"First, world trade has declined with startling rapidity. Measured in terms of the volume of goods in 1933, it has been reduced to approximately 70 per cent of its 1929 volume; measured in terms of dollars, it has fallen to 35 per cent. The drop in the foreign trade of the United States has been even sharper. Our exports in 1933 were but 52 per cent of the 1929 volume, and 32 per cent of the 1929 value.

"This has meant idle hands, still machines, ships tied to their docks, despairing farm households, and hungry industrial families. It has made infinitely more difficult the planning for economic readjustment in which the Government is now engaged.

"You and I know that the world does not stand still; that trade movements and relations once interrupted can with the utmost difficulty be restored; that even in tranquil and prosperous times there is a constant shifting of trade channels.

"How much greater, how much more violent is the shifting in these times of change and of stress is clear from the record of current history. Every nation must at all times be in a position quickly to adjust its taxes and tariffs to meet sudden changes and avoid severe fluctuations in both its exports and its imports.

"You and I know, too, that it is important that the country possess within its borders a necessary diversity and balance to maintain a rounded national life, that it must sustain activities vital to national defense and that such interests cannot be sacrificed for passing advantage. Equally clear is the fact that a full and permanent domestic recovery depends in part upon a revived and strengthened international trade and that American exports cannot be permanently increased without a corresponding increase in imports.

"Second, other governments are to an ever-increasing extent winning their share of international trade by negotiated reciprocal trade agreements. If American agricultural and industrial interests are to retain their deserved place in this trade, the American Government must be in a position to bargain for that place with other governments by rapid and decisive negotiation based upon a carefully considered program, and to grant with discernment corresponding opportunities in the American market for foreign products supplementary to our own.

"If the American Government is not in a position to make fair offers for fair opportunities, its trade will be superseded. If it is not in a position at a given moment rapidly to alter the terms on which it is willing to deal

with other countries, it cannot adequately protect its trade against discriminations and against bargains injurious to its interests. Furthermore, a promise to which prompt effect cannot be given is not an inducement which can pass current at par in commercial negotiations.

"For this reason, any smaller degree of authority in the hands of the Executive would be ineffective. The executive branches of virtually all other important trading countries already possess some such power."

Taxes

The 1934 tax bill, HR 7835, which was passed by the House on February 21, and amended and passed by the Senate on April 17, is in conference as the DIGEST goes to press. A full report of its provisions as finally agreed upon will be published in the June DIGEST.

The Federal Trade Commission

Continued from page 134

jurisdiction. The law provides for the issuance of a complaint and a trial as procedure for the accomplishment of this end. But it is also provided that this procedure shall be had only when it shall be deemed to be in the public interest, plainly giving the commission a judicial discretion to be exercised in the particular case.

"It has been contended that the language of the statute using the word 'shall' is mandatory, but in view of the public-interest clause no member of the commission as now constituted holds or has ever held that the statute is mandatory. Hence, the proposed rule for settlement of applications for complaint (by stipulation) may be considered on its merits.

"If it were not for the public-interest clause it might appear that the statute would be mandatory. It remains to determine what effect the public-interest clause has. In the interest of economy and of dispatch of business as well as the desirability of accomplishing the ends of the commission with as little harm to respondents as possible (therefore), all cases should be so settled where they can be except where the public interest demands otherwise.

"But when the very business itself of the proposed respondent is fraudulent, it may well be considered by the commission that the protection of the public demands that the regular procedure by complaint and order shall prevail. Indeed, there are some cases where that is the only course which would be of any value at all. As, for instance, the so-called "blue-sky cases" and all such where the business itself is inherently fraudulent or where a business of a legitimate nature is conducted in such a fraudulent manner that the commission is warranted in the belief that no agreement made with the proposed respondent will be kept by him.

"The rule shall be that all cases shall be settled by stipulation except when the public interest demands otherwise for the reasons set forth above."

Registrations Under the Federal Securities Act

DURING March, 23 registration statements filed with the Federal Trade Commission under the Securities Act of 1933, became effective, representing proposed security issues with a total gross value of $24,717,219. These figures are exclusive of registration statements becoming effective during March covering reorganization issues and certificates of deposit.

Including reorganization issues and certificates of deposit, the number of registration statements becoming effective during March was 68, involving total offerings of $48,711,239.

For the January-March quarter of 1934, 93 registration statements, exclusive of reorganization issues and certificates of deposit, became effective, involving issues with a total gross value of $167,426,450. During the same three months, the number of registration statements becoming effective, including reorganization issues and certificates of deposit, was 176, involving offerings totaling $240,749,823.26.

From July 7, 1933, the date on which the first registration statements were filed under the Securities Act, up to and including March 31, the total number of statements filed with the Federal Trade Commission is 801, involving proposed offerings in the total sum of $927,588,958.40.

During the same period, the number actually becoming effective was 522, involving offerings totaling $617,486,153.49. These figures include reorganization issues and certificates of deposit.

Up to March 31st, the number of statements withdrawn by the proposers was 105, and the number of stop orders issued by the Commission was 35, leaving 139 statements still under examination.

Offerings involved in stop orders totaled $7,765,599.83. Those proposed in statements which were withdrawn totaled $56,622,827.74, while the amount of offerings involved in statements still under examination is $245,714,377.34.—*Extracts, see 6, p. 160.*

The Class Room Studies the Federal Securities Act

To gain an understanding of the reasons for the passage of the Federal Securities Act of 1933, the student will find it helpful to read with particular care two articles in this issue of the DIGEST; the article by Professor Laylin K. James, beginning on page 130, and the article by Representative Sam Rayburn in the Pro and Con section, beginning on page 149, and the message of President Roosevelt in the legislative history of the Act on page 131.

The article by Professor James gives a vivid picture of the conditions which led up to the passage of the Act.

The article by Representative Rayburn, who is Chairman of the House Committee on Interstate and Foreign Commerce, which prepared the bill, as originally passed by the House, contains an excellent presentation of the birth and growth of corporations and stock companies in the United States.

Because of its great length and, to the average layman, the puzzling technicalities involved, the DIGEST makes no attempt to give a comprehensive summary of the provisions of the Federal Securities Act. Rather, it has chosen to present the brief statement contained in the report on the bill by the Senate Committee on Banking and Currency which sets forth the basic provisions of the legislation.

The legislative history of the Act, beginning on page —, will enable the student to trace its path through Congress. While the speed with which the bill was put through both houses was unusual for so important and far-reaching a piece of legislation, there was nothing about the procedure which was outside the regular order of legislation as provided for in the standing rules of the House and Senate.

In each house the bill was formally introduced, considered at open committee hearings—although the hearings were brief—and reported in regular form.

When the bill was reported to the House a special rule was adopted for its consideration, limiting debate to five hours—two and one-half hours a side. This was unusual, but was characteristic of the general legislative situation existing at the time. The majority in both houses of Congress were following the lead of President Roosevelt practically without question. The Securities bill was put forward by the Democratic leaders as part of the New Deal, and was accepted and put through as such.

In the House the bill was referred to the Committee on Interstate and Foreign Commerce. In the Senate the bill was first referred to the Committee on Interstate Commerce, but was later withdrawn from that Committee and re-referred to the Committee on Banking and Currency. The change of reference was made on the ground that the Committee on Banking and Currency had been considering stock exchange legislation and had before it vast evidence concerning the sales of securities, etc., which had familiarized the members of the Committee with the entire subject matter covered by the bill.

Therefore, if the class desires to set itself up as a House Committee, it will be the Committee on Interstate and Foreign Commerce; if a Senate Committee, the Committee on Banking and Currency.

For classroom purposes, it would be well to draw up a bill containing merely the outline of provisions as found in the Senate report, since, to go deeply into technicalities would tend to produce confusion.

For those arguing in favor of full support of the Act, points to be made are:

1. Those desiring to invest in securities—stocks, bonds, etc., are entitled to full information as to the securities offered for sale.

2. The proper way to protect the buyer is to make the seller responsible for accurate and truthful statements regarding that which he offers for sale.

3. Laws to this effect have been enacted in nearly every state in the Union, but state laws are ineffective beyond the borders of the State which enacts them.

4. Since securities issued in one state are sold throughout other states it was necessary for the Federal Government to deal with these as interstate commerce and to pass a Federal law to supplement state laws.

5. To carry out these purposes Congress passed the present law.

For those arguing against the Act as it is now framed, points to be made are:

1. While prospective purchasers of securities are entitled to full and accurate information as to securities offered for sale, and while the seller should be held responsible, within reason, for statements concerning the securities so offered, the law, as written, is so drastic in the demands it makes on the seller that many sound and honest dealers are afraid to issue securities under it. (See Pro and Con section for citation of examples.)

2. The bill was hastily drawn and jammed through both houses of Congress without a reasonable time being given to a full discussion which, if had, would have brought to light the weak spots in the bill.

3. That, while the bill provides that an approval by the Federal Trade Commission is not guarantee of the value of the security, the law is so drastic that offerers of securities, having made every effort, in good faith, to comply with its provisions, may still subject themselves to ruin by an inadvertent error.

4. A Federal law is wholly unnecessary because there is full redress by state laws.

5. The result of the drastic provisions of the law is to retard economic recovery, since it operates in direct opposition to the NRA which is urging industry to increase its operations and its employment.

The Students' Question Box

Q. Can President Roosevelt, if he so desires, compel Congress to adjourn the present session on a date chosen by the President? M. C.

A. No. Congress sets the date for its adjournment. There is, however, one occasion on which the President may exercise the power to adjourn Congress and that is when the two houses cannot agree to a date to adjourn.

In order to prevent one house from holding Congress in session against the wishes of the other house, the following provision was written into the Constitution of the United States:

Art. 11. Sec. 3.—"he (the President) may on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them with Respect to the Time of Adjournment, he may adjourn them until such Time as he shall think proper."

Q. Does the President have to be at the White House in Washington to sign official documents? E. M.

A. No. Wherever the president goes his powers of office go with him.

A President rarely leaves Washington without one or more members of the official White House staff. They keep in daily touch with the White House. If important documents need to be signed they are sent to the President from Washington and he signs them and returns them to the White House.

The greatest distance from Washington ever travelled by a President is Paris, where President Wilson transacted all domestic business necessary for him to transact during his sitting at the Peace Conference.

Q. Is there an official "Summer White House"? A. B. L.

A. No. So-called "Summer White Houses," have been established by Presidents on their own choice during vacation periods in many sections of the country, but they are not official. Among those in recent years were: Theodore Roosevelt, his home at Sagamore Hill, near Oyster Bar, New York; William Howard Taft, Gloucester and Woods Hole, Massachusetts; Woodrow Wilson, Shadow Lawn, New Jersey, and Cornish, New Hampshire; Warren G. Harding, his home at Marion, Ohio, and occasional tours and short visits in various parts of the country; Calvin Coolidge, Paul Smith's, in the Adirondack Mountains, New York; Plymouth, Vermont; Swampscott, Massachusetts; Rapid City, South Dakota; the White Estate on the Broule River, Wisconsin; Herbert Hoover, Rapidan, Virginia; Franklin D. Roosevelt, his home at Hyde Park, New York; his Mother's summer home, Campo Bello, Canada, and yachting and fishing trips.

Q. Are the Congressional Records and the Congressional Directory the same publication? B. L.

A. No. The Congressional Record is the daily record or journal of the proceedings of the House and the Senate. It is published every day Congress is in session by the Government Printing office.

The Congressional Directory is a book containing the names of Senators and Representatives, and other information concerning Congress and the Executive Departments. It is published at least once and usually twice every session.

Q. Who furnished the biographical sketches of Senators and Representatives which appear in the Congressionary Directory? R. F.

A. The Senators and Representatives furnish their own biographies, which vary in length according to the wish of the Senator or Representative. Some of the sketches are confined to the mere statement of the name of the member with the mention of the Congress or Congresses to which he was elected. Some of the longer ones cover a full page of the directory. The average biography consumes about 100 or 125 words.

Q. Following the recent death of Representative Edward W. Pou, of North Carolina, who is the oldest member of Congress in point of service? A. E. K.

A. In the House, Speaker Henry T. Rainey, of Illinois, who has served 15 terms or 30 years not consecutively, and 14 or 28 years terms consecutively. In the latter record he is equalled by Representative Adolph J. Sabath, also of Illinois and also a Democrat.

Senator William E. Borah, of Idaho, is the oldest Senator in point of service having served continually since March 4, 1907, or 27 years.

Q. What does the term, "Watch Dog of the Treasury" mean? R. L. B.

A. This term is usually applied to the Chairman of the House Committee on Appropriations, whose duty it is to check on the expenditures of the Government. The title is now shared by the Director of the Budget, through whose hands must pass all requests for appropriations from the various executive departments, before they are forwarded to Congress.

AFTERMATH:—

Progress of Problems Discussed in Special Features of Preceding 1934 Numbers of the Digest

Gold

(January, 1934)

The Administration's gold policy remains unchanged. The question is no longer in the controversial stage but for the present, at least, has become merely a matter of routine business for the Treasury Department.

Education

(February, 1934)

The Ellzey bill, HR 7059, appropriating $3,000,000 a year for vocational education was passed by the House on April 26. As the DIGEST goes to press it is before the Senate Committee on Education and Labor.

The House Committee has been considering, in executive session, bills for direct Federal Aid to public schools, but has not worked out a final draft of a bill. Members of the Committee expect to call at the White House early in May to talk over the problem with the President in order that they may be informed as to his attitude in the matter.

Food and Drugs

(March, 1934)

The Food and Drugs bill, S 2800, remains on the Senate Calendar awaiting action. Numerous amendments have been offered in the Senate but there is no indication that the bill will be given consideration on the floor of the Senate in the near future.

While the bill has the sympathetic approval of the White House it is not one of the measures which the President is anxious to have passed at this session, as is the case with the tariff, tax and stock market bills.

This does not mean that the Food and Drugs bill may not get through the Senate at this session, but it does mean that its consideration will not be permitted to interfere with what the Administration Senators consider more important legislation.

National Defense

(April, 1934)

In announcing that he would soon ask Congress to appropriate a billion and a half dollars for public works, the President stated that $230,000,000 of that fund would be spent getting the Navy Department started on building the Navy up to treaty strength.

The Vinson bill, signed by the President on March 27, authorized this construction, but left the decision as to when it should begin entirely in the hands of the President. By his latest announcement the President makes it clear that he will proceed promptly with the work.

In recent appearances before Congressional Committees General Douglas McArthur, Chief of Staff, again urged Congress to appropriate sufficient money to keep the Army up to a safe standard.

Full reports on the Army and Navy appropriations and other final action by Congress on National Defense will be recorded in the June number of the DIGEST.

SOURCES OF INFORMATION FOR THIS NUMBER

1. (American Bar Association) Report of Special Committee of American Bar Association.
2. (Landis) Address New York State Society Certified Public Accountants, October 30, 1933.
3. Report, Senate Committee on Banking and Currency, April 27, 1933.
4. Report, House Committee on Interstate and Foreign Commerce, May 4, 1933, 73rd Congress, Report No. 85.
5. (United States Chamber of Commerce—Hodges) Report, Committee on Regulations of Securities, March, 1934.
6. (Registrations under Act) News Release from Federal Trade Commission April 16, 1934.
7. (James) Address, before Law Institute, Toledo, Ohio Bar Association, February 3, 1934.
8. (Rayburn, Wolverton) Congressional Record, May 5, 1933.
9. Washington Post, April 5, 1934.
10. (Callbreath) Hearings Senate Committee on Interstate Commerce, December 11, 1922.
11. (Nathan Isaacs) Yale Law Journal, December, 1933.